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No. 345

In the

Supreme Court of the United States

OCTOBER TERM, 1969

AMALGAMATED TRANSIT UNION, LOCAL DIVISION 1338, HENRY PYLE, G. W. BRIDGES, AND CHARLES WORK (individually and as representatives of a class of beneficiaries of a retirement plan); and W. E. ARMSTRONG AND H. H. BENNETT (individually and as representatives of a class of beneficiaries of a retirement plan),

Petitioners,

v.

THE DALLAS PUBLIC TRANSIT BOARD; THE CITY OF DALLAS; THE DALLAS TRANSIT COMPANY AND THE MERCANTILE NATIONAL BANK AT DALLAS,

Respondents.

BRIEF OF THE DALLAS PUBLIC TRANSIT BOARD AND THE CITY OF DALLAS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF OF THE DALLAS PUBLIC TRANSIT BOARD AND THE CITY OF DALLAS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the Honorable Supreme Court of the United States:

The Respondents, Dallas Public Transit Board and the City of Dallas file this their Brief in Opposition to the Petitioner's Request for a Writ of Certiorari and pray that no writ issue to review the judgment of the Texas Court of Civil Appeals for the Fifth Supreme Judicial District, at Dallas, delivered May 31, 1968.

OPINIONS BELOW

The Opinion of the Texas Court of Civil Appeals for the Fifth Supreme Judicial District of Texas appears in Appendix E, Pages 52a to 74a, and is reported in 430 S.W. 2d 107. No opinion was rendered by the Texas Supreme Court.

JURISDICTION

The decision of the Texas Court of Civil Appeals for the Fifth Supreme Judicial District is final as stated by Petitioners. The jurisdiction of this court is invoked by the Petitioners under 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

Whether the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas was correct in holding that Article 5154(c), Vernon's Annotated Statues of Texas, as amended, when applied to a Pension Plan and Trust assumed by a public employer purchasing a private transportation system makes illegal those provisions which require the public employer to negotiate with the union, (which has the right to strike), and as so construed,

(1) Does not violate the First Amendment to the United States Constitution in that it does not deny freedom of association, assembly and petition; and

(2) Does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

Amendments I and XIV, Constitution of the United States; Article 5154(c), Vernon's Annotated Texas Statutes.

STATEMENT OF FACTS

These Respondents agree substantially with the Statement of Facts made by the Petitioners in their Writ of Certiorari, however, the Respondents present this additional Statement:

(1) Article 5154(c) was enacted by the Legislature of the State of Texas in 1947, and is attached hereto as Appendix A.

(2) On April 6, 1960, the Dallas Transit Company, a private corporation, and predecessor in title to Respondent, City of Dallas, entered into an agreement with Division 1338, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, predecessor to Petitioner's Union, growing out of a collective bargaining agreement for a Trusteed Retirement Plan for Union Employees of Dallas Transit Company, a copy of said Retirement Plan being attached hereto as Appendix B.

(3) On July 1, 1960, the above named parties entered a Trust Agreement creating a "Trust for Trusteed Retirement Plan For Union Employees of Dallas Transit Company" as a result of collective bargaining, a copy of said Trust Agreement being attached hereto as Appendix C.

(4) Certain excerpts from the Constitution and general laws of the Amalgamated Transit Union of which Petitioner's Union is Local Division 1338 were admitted into evidence. (S.F. 14; Pl. Ex. 14) (Appendix D, Pages 49a to 51a). This shows as pointed out in the Petitioner's Statement of Facts that the union representing the employees did reserve the right to strike contrary to Article 5154(c).

(5) The opinion of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas was delivered on May 31, 1968, and is attached hereto as Appendix E.

ARGUMENT

The petitioners claim that the Transit Union Employees of the City of Dallas selected the Labor Union as their policing agent in their Pension Trust Agreement. They claim this is a First Amendment freedom to select this Labor Union, which claims the right to strike, as their Agent. We maintain that the Pension Trust Agreement requires additional bargaining before it can be amended. To make the Union the Agent of the employees would require the City of Dallas to collectively bargain with that Union. This is against established public policy as set forth in Article 5154(c). Therefore, the Court of Civil Appeals was correct in holding that the Statute prohibits the Amalgamated Transit Union, Local Division 1338, from being a party to the agreement with the City of Dallas. The Trust Plan is the result of a collective bargaining agreement and in the future will require further collective bargaining.

The Court of Civil Appeals, in a very lucid opinion, clearly set forth all the facts in the case at bar. In its opinion, that court clearly held that both the Plan and Trust resulted from collective bargaining agreements and provide for the continuation of collective bargaining agreements between the Union and the Company, the court saying:

> "We are convinced that the instruments with which we are now dealing, the Plan and the Trust, while not collective bargaining agreements, as such, do result from collective bargaining agreements and necessarily provide, by their very terms, the continuation of collective bargaining agreements between the Union and the Company. * * *"
>
> "We are also convinced that the pension Plan and Trust fall clearly within the 'wages, hours or conditions of employment of public employees' provision of the statute in question. Probably the leading case on the question of whether a retirement or pension plan is a mandatory subject of collective bargaining is Inland Steel Co. v. National Labor Relations Board, 170 F. 2d 247 (7th Cir. 1948, cert. denied 336 U.S. 960). In that case employer argued that its pension plan was outside the scope of collective bargaining while the Union and the National Labor Relations Board argued to the contrary. The court, in a well-reasoned and extensive opinion, held that the pension plan is one of the 'conditions of employment' and therefore an extension of the collective bargaining agreement." (Page 65a; Appendix E)

Accordingly, the Court held that it is clearly illegal for the Respondent, City of Dallas, to be a party to the Plan and Trust with the other party being the Union, the Court saying:

> "Accordingly, it is our opinion and we hold that it is illegal for the City of Dallas to be a party to the Plan and Trust with the other party thereto being the

> Union which claims to be the collective bargaining representative of the Union employees." (Page 66a, Appendix E)

Moreover, it will be noted that the Court of Civil Appeals reformed the judgment of the trial court to provide for bilateral authority between the City of Dallas and the employees who are beneficiaries under such Plan and Trust acting by and through their duly authorized representative or representatives, provided, however, that such representative or representatives do not claim the right to strike, the court saying

> "Specifically, the judgment of the trial court is modified, as to Paragraph 1, as follows:
>
> > 1. 'That the application for instruction and Declaratory and Equitable Relief by Trustee be granted. The said Trustee is hereby instructed to disregard any provisions in the Plan and Trust designated 'Trusteed Retirement Plan for Union Employees of Dallas Transit Company' requiring recognition of Defendant Transit Union and said Transit Union is thus being removed as a party to said Plan and Trust. In the administration of the Plan and Trust the employees who are beneficiaries under such Plan and Trust are granted the right and privilege of selecting or electing their own representative or representatives, provided such representative or representatives do not reserve the right to strike, to be substituted for and in lieu of the Union in the administration and other provisions of the Plan and Trust." (Page 69a, Appendix E)

At the outset, it should be pointed out that the National Labor Relations Act does not apply to "any state or political subdivision thereof" (29 USC Sec. 152(2)). In accordance therewith the Legislature of the State of Texas enacted the "Right-to-Work" Laws of which Article 5154(c) forms a part. The Petitioners contend that the application of this Statute to the Pension Trust by the Court denies the public employees constitutionally protected freedoms of association, assembly and petition. These same contentions have been heretofore made and have been rejected. The Courts of Texas have protected the right of the employees to make a free choice to join the labor union or to refuse to join. *Lunsford v. City of Bryan*, 156 Tex. 530, 297 S.W. 2d 115; *South Atlantic Longshoremen v. Harris County Navigation District*, 358 S.W. 2d 658 (Tex. Civ. App.—Houston, 1962, writ ref'd n.r.e.), cert. denied 372 U.S. 975; *Dallas Independent School District v. American Federation of State, County, and Municipal Employees, Local Union No. 1442, et al*, 330 S.W. 2d 702. (Tex. Civ. App. — Dallas, 1959, writ ref'd n.r.e.) The right to belong to the Union is preserved, but it does not follow that the union, which preserves the right to strike, is entitled to negotiate with the city contrary to the Statute.

The leading case on the overall constitutionality of Article 5154(c) is *South Atlantic Longshoremen v. Harris County Navigation District*, Supra. This case involved an appeal from an order enjoining various labor unions from engaging in a strike and picketing the navigation district. The order was issued pursuant to Section 3 of Article 5154(c) which declares it to be against the public policy of the State of Texas for public employees to engage in strikes or work stoppages against the State of Texas or any political subdivision thereof. In that case the union attorneys attacked the order on the grounds that:

(1) The exclusive jurisdiction rests with the Federal authorities;

(2) That freedom of speech was restricted under the First Amendment; and

(3) That the rights under the Fourteenth Amendment were violated.

In overruling the contention that the statute restricted freedom of speech guaranteed by the First Amendment, the Court held that even peaceable activity could be enjoined by the State if it were for an unlawful purpose. In answer to the contention that the Bill of Rights under the Fourteenth Amendment was violated, the Court said:

> "We do not think that the provision of Art. 5154c, V.A.T.S., declaring it to be the public policy of this State that employees of the State or a political subdivision thereof shall not have the right to strike, or our decision that public policy prohibits peaceable picketing for the purpose of inducing such a strike, violates any constitutional guarantee secured to any of the appellants by either the Constitution of the United States of America or the Constitution of the State of Texas. (quoting and citing from cases) * * * ".

In that case the Court held that the National Labor Relations Act excludes state and political subdivisions from the Labor Relations Act (29 USC 152(2) & (3)). Since a political subdivision is likewise excluded from the Welfare and Pension Plan Disclosure Act (29 USCA Sec. 301 and Sec. 303(b) (1)), it would seem that the same reasoning could be applied to hold that Article 5154(c) makes it illegal for a city to negotiate with a union (which reserves the right to strike) insofar as the terms of a pension system are concerned. This would not be an unconstitutional application because it does not deal with a right which was protected by the Constitution.

In the first place we must recognize that those laws pertaining to employees in private industry do not necessarily apply to those employees in the public sector. It is true that the First Amendment freedoms of public employees may not be denied to them, but there is a distinct public interest which pervades the relationship between the employees of a City and its citizens.

This Court has held that excluding public employees from the provisions of a State Labor Relations Act, as many States have done, does not violate the equal protection clause of the United States Constitution. *Railway Mail Ass'n. v. Corsi,* 326 U.S. 88.

The Supreme Court of California in *State v. Brotherhood of Railroad Trainmen,* 232 Pacific 2d 857 (1951), pointed out the difference between those employees in private employment and Government employees in this manner:

> "Recent authorities hold uniformly that the wages, hours and working conditions of government employees must be fixed by statute or ordinance and that state laws which, in general terms, secure the right of employees to enter into collective bargaining agreements with respect to those matters are not intended to apply to public employment. Nutter v. City of Santa Monica, 74 Cal. App. 2d 292, 168 P. 2d 741; City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W. 2d 539, 545; Miami Water Works Local No. 654 v. City of Miami, 157 Fla. 445, 26 So. 2d 194, 195, 165

A.L.R. 967; see Mugford v. Mayor and City Council of Baltimore, 185 Md. 266, 44 A. 2d 745, 746-747, 162 A.L.R. 1101; Hagerman v. City of Dayton, 147 Ohio St. 313, 71 N.E. 2d 246, 253, 254, 170 A.L.R. 199; 1 Teller, Labor Disputes and Collective Bargaining [1940 ed., 1947 Supp.], § 171.

Apparently, the petitioners did not make this distinction in their petition. Rather they base their argument on what they call more than just the "naked right" to associate together in a Union. In support they cited the following cases: *U. S. v. Robel*, 389 U.S. 258, 263; *United Mine Workers v. Illinois Bar Association*, 389 U.S. 217; *NAACP v. Button*, 371 U.S. 415; and *Railroad Trainmen v. Virginia Bar*, 377 U.S. 1.

An analysis of these cases simply shows that they are applying the test that was set forth in the *Robel* case, supra. The Court stated that the test was not a "balancing" but that it was an attempt to achieve legitimate legislative goals within narrow lines to avoid a conflict between the public interest and the individual rights. It is stated as follows in the *Robel* case:

> We are concerned solely with determining whether the statute before us has exceeded the bounds imposed by the Constitution when First Amendment rights are at stake. The task of writing legislation which will stay within those bounds has been committed to Congress.
>
> Our decision today simply recognizes that, when legitimate legislative concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goal by means which have a "less drastic" impact on the continued vitality of First Amendment freedoms.

Shelton v. Tucker, supra; cf. United States v. Brown, 381 US 437, 461, 14 L ed 2d 484, 499, 85 S Ct 1707 (1965).

The determination of the issue in this Petition should recognize the distinction between private employment and public service. Private employers are motivated by the profit motive and if left unrestrained may completely disregard the welfare of their workers. On the other hand, different conditions prevail in the case of public employment. There is no incentive on the part of public officers to oppress the worker. Rather, fair treatment is compelled by law and the authority resting in them is limited by law. "That authority may not be delegated or surrendered or surrendered to others, since it is public property." *Mugford v. Mayor and Council of Baltimore*, 1944 Cir. Ct. 2 of Baltimore City, Md., 9 Mun. Law Journal 46; *Nutter v. City of Santa Monica*, 168 Pac. 2d 741, at Page 745, (1946).

To better emphasize the point, the Court in each of the Petitioner's cases pointed out that there was not a compelling public interest at stake or at least it had not been shown, as follows:

> (a) "The decree at issue here thus substantially impairs the associational rights of the Mine Workers and is not needed to protect the State's interest in high standards of legal ethics."[1]
>
> (b) "In the present case the State again has failed to show any appreciable public interest in preventing the Brotherhood from carrying out its plan to recom-

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[1] United Mine Workers of America, District 12 v. Illinois State Bar Association, 389 U.S. at P. 225.

> mend the lawyers it selects to represent injured workers."[2]
>
> (c) "We conclude that although the petitioner has amply shown that its activities fall within the First Amendment's protections, the State has failed to advance any substantial regulatory interest, in the form of substantive evils flowing from petitioner's activities, which can justify the broad prohibitions which it has imposed."[3]

In this case we are not dealing with the right of a worker to join a Union. This is one of the First Amendment freedoms which is certainly upheld by the Courts as belonging to public employees as well as to private employees. Here we are dealing with the right of the public body to determine wages, hours, conditions of employment and other matters pertaining to the employment of the public employees. These are matters of State concern and not a matter for collective bargaining. This was very clearly pointed out in the case of *Government and Civic Employees Organizing Committee, CIO, et al v. Windsor, et al,* 116 F. Supp. 354 (1953); judgment affirmed 347 U.S. 901 (1954), when the Court was considering House Bill 231 by the Legislature of the State of Alabama, referred to as the "Solomon Bill". The Court said:

> "The Solomon Bill concerns an important area of State administration and proclaims a broad legislative policy as to such administration. As to employees working for the State, there can hardly be any dispute that the settlement of grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work are matters for the State government to be per-

---

[2] Brotherhood of Railroad Trainmen v. Virginia, 377 U.S. at P. 8.
[3] NAACP v. Button, 371 U.S. at P. 444.

> formed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the Act defines 'labor union or labor organization,' and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State and, as so construed, meet the challenge of unconstitutionality."

The fact that the public employees are granted the right of free association and they have the right to form and join Labor Unions, whether on a local or national basis, does not confer on them the right to force collective bargaining with the City itself. This particular facet was directly in issue in the case of *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (1969), and the Court dealt with it thusly:

> "We find nothing unconstitutional in G.S. § 95-98. It simply voids contracts between units of government within North Carolina and labor unions and expresses the public policy of North Carolina to be against such collective bargaining contracts. There is nothing in the United States Constitution which entitles one to have a contract with another who does not want it. It is but a step further to hold that the state may lawfully forbid such contracts with its instrumentalities. The solution, if there be one, from the viewpoint of the firemen, is that labor unions may someday persuade state government of the asserted value of collective bargaining agreements, but this is a political matter and does not yield to judicial solution. The right to a collective bargaining agreement, so firmly entrenched in American labor-management relations, rests upon national legislation and not upon the federal Constitution. The State is within the powers reserved to it to refuse to enter into such agreements and so to declare by statute."

Petitioners would argue that the Amalgamated Transit Union does not assert the right to strike because the Pension Trust provides for arbitration. As the petitioners state "The Union's Constitution and By-Laws require submission of any dispute to arbitration before strike permission is granted" (Page 15 of the petition). In other words they beg the question. Their Constitution and By-laws provide that they may strike (Appendix D, Pages 49a to 51a). Only the National Organization can disavow the right to strike and it did not do so. So, for the purpose of this case we can only assume that the Union still maintains that right.

This Court has held that the Statute should deal specifically with the problem and not be too broad, insofar as First Amendment freedoms are concerned. *Robel case,* supra. The issue in this case is narrow in scope. The Statute is likewise narrow in scope. Both deal with the right of the public employees in the Pension Plan and Trust to have the Union do the bargaining with the City for its Members.

Section 6 of Article 5154(c) gives the right to the public employees to have many representatives and limits that right only to that representative which claims the right to strike, to-wit: the Amalgamated Transit Union in this case. Certainly this is narrow in scope and deals with a specific public interest problem and no more. The Courts have given it a narrow construction. Note the case of *Dallas Independent School District v. American Federation of State, County and Municipal Employees Local 1442, et al,* supra, in which the Court says:

> "Since enactment of above quoted legislation in 1947, and within its limitations, public employees may be-

> come members of a labor union. Beverly v. City of Dallas, Tex. Civ. App., 292 S.W. 2d 172. The Act (Article 5154c) deals exclusively with 'public employees, labor organizations, strikes, etc.' and with respect to appellants' point 3-b, it appears almost too plain for argument that the word 'representative' of Section 6 is referable to Labor Unions that do not claim a right to strike."

Article 5154(c) does not unreasonably discriminate against the Union. Section 6 states that if the Union claims the right to strike it may not represent the employees to present grievances. Section 1 provides that the City cannot enter into a collective bargaining agreement with the Union. The case of *Government and Civic Employees Organizing Committee, CIO, et al v. Windsor, et al*, supra, upheld a statute similar to Section 1. The case of *Dallas Independent School District v. American Federation of State, County and Municipal Employees Local 1442, et al*, supra, upheld Section 6. Neither paragraph is unreasonably discriminatory. The Fourteenth Amendment to the United States Constitution, as construed by this Court, requires there must be "invidious discrimination".

In the case of *Williamson v. Lee Optical Company of Oklahoma, Inc. — Lee Optical Company of Oklahoma v. Williamson, Attorney General*, 348 U.S. 483, 99 L. Ed. 563, 75 S. Ct. 461, this Court upheld the validity of an Oklahoma Statute dealing with regulation of visual care as against claims of unconstitutionality, ruling that no due process violation resulted from the state's provisions which:

> (1) Prohibited an optician from fitting or duplicating lenses without a prescription from an ophthalmologist or an optometrist;

> (2) Prohibited the advertisement of spectacles, eye glasses, lenses, prisms, eye glass frames, mountings or other optical appliances; and
>
> (3) Barred operators of retail stores from providing space therein to any person purporting to do eye examination or visual care.

This Court further held that no invidious discrimination violative of the equal protection clause of the First or the Fourteenth Amendments was inherent in the state's exemption from the regulation of sellers of ready-to-wear glasses, this Court saying at 348 U.S. 488, 99 L. Ed. 573:

> "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Tigner v. Texas, 310 US 141, 84 L ed 1124, 60 S Ct 879, 130 ALR 1321. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. Semler v. Oregon State Dental Examiners, 294 US 608, 79 L ed 1086, 55 S Ct 570. The legislature may select one phase of one field and apply a remedy there, neglecting the others. A. F. of L. v. American Sash & Door Co. 335 US 538, 93 L ed 222, 69 S Ct 258, 260, 6 ALR2d 481. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

Just because a statute is not all embracing does not mean that it is discriminatory. Some inequality is allowable and all facts that purport to sustain the statute should be considered. The one who attacks the classification has the burden of showing that it is unreasonably arbitrary. *James-Dickinson Farm Mortgage Co. v. Harry*, 273 U.S. 119, 71 L. Ed. 569, 47 S. Ct. Rep. 308; *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 55 L. Ed. 369, 31 Sup. Ct. Rep. 337.

The petitioners have not sustained their burden of showing invidious discrimination under the Fourteenth Amendment to the United States Constitution.

This case differs from others that have been cited in that there are two very compelling matters of public interest which the Legislature sought to protect, to-wit: (1) the right of the governing body, as the elected representatives of the people, to set wages, salaries and conditions of employment as a governmental function. Collective bargaining impinges on this right; and (2) the obligation to furnish necessary services to its citizens, which are denied to them by the strike. (Note the firemen's strike in Gary, Indiana, the garbage workers in New York, the teachers in Florida and others recently in the news).

The First Amendment freedoms are not absolute under all circumstances. Acting as representative of the Union employees by the Labor Union is not speech or assembly but goes beyond that to acts which have no Constitutional protection. *Cantwell v. Connecticut*, 310 U.S. 296. The public interest far outweighs the freedom to act sought by the petitioners.

CONCLUSION

The petition for Writ of Certiorari should be denied because (a) this is a matter that deals with public employees on matters of wages, hours and conditions of employment which is purely a State matter; (b) there is an overriding public interest involved which is covered by State Statute; (c) the Statute is not over-broad but deals with the problem sought to be solved; and (d) the Statute, as construed by the Court, does not result in invidious discrimination.

Respectfully submitted,

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By ______________________
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CERTIFICATE OF SERVICE

A Copy of the foregoing Brief of Respondents, the Dallas Public Transit Board and City of Dallas, in Opposition to the Petition for Writ of Certiorari has been served upon the petitioners by depositing a true copy thereof in the United States Mail, postage prepaid, addressed to:

Mr. Earl W. Putnam,
5025 Wisconsin Avenue N.W.,
Washington, D.C. 20016,

Messrs. L. N. D. Wells, Jr.
and G. W. Baab,
1601 National Bankers Life
Building,
Dallas, Texas 75201,
Attorneys of Record for Petitioners,

this the 17 day of August, A. D., 1969.

Attorney for Respondents

APPENDIX A

ARTICLE 5154c

VERNON'S TEXAS CIVIL STATUTES

"Art. 5154c. Public employees, collective bargaining contracts with organizations representing; strikes; loss of civil service and other rights.

Section 1. It is declared to be against the public policy of the State of Texas for any official or group of officials of the State, or of a County, City, Municipality or other political subdivision of the State, to enter into a collective bargaining contract with a labor organization respecting the wages, hours or conditions of employment of public employees, and any such contracts entered into after the effective date of this Act shall be null and void.

Section 2. It is declared to be against the public policy of the State of Texas for any such official or group of officials to recognize a labor organization as the bargaining agent for any group of public employees.

Section 3. It is declared to be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State of Texas or any political subdivision thereof. Any such employee who participates in such a strike shall forfeit all civil service rights, re-employment rights and any other rights, benefits, or privileges which he enjoys as a result of his employment or prior employment; providing, however, that the right of an individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

Section 4. It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or nonmembership in a labor organization.

Section 5. The term 'labor organization' means any organization of any kind, or any agency or employee, representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Section 6. The provisions of this Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.

Section 7. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved. Acts 1947, 50th Leg., p. 231, ch. 135."

APPENDIX B

Trusteed Retirement Plan for Union Employees of Dallas Transit Company

TRUSTEED RETIREMENT PLAN
FOR UNION EMPLOYEES OF
DALLAS TRANSIT COMPANY

DALLAS TRANSIT COMPANY and DIVISION 1338 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, to provide regular retirement income and certain disability benefits, do hereby constitute, establish and adopt the following Plan for the Union employees of the Company:

ARTICLE I

DEFINITIONS

Section 1.01. The following terms, as used herein, shall have the meanings respectively set forth below, except as the context may otherwise specifically indicate:

(a) "Plan" means the Trusteed Retirement Plan for Union Employees of Dallas Transit Company as contained herein and all amendments hereto.

(b) "Company" means Dallas Transit Company or its successors and assigns.

(c) "Employer" means Dallas Transit Company or its successors and assigns.

(d) "Employee" means any individual who is eligible for Union membership and who is regularly and continuously employed by the Company on the basis of a regularly scheduled work week of not less than twenty hours per week and on the basis of fifty-two weeks in any yearly period, inclusive of authorized leave or military leave of absence.

(e) "Participant" means any Employee who is actively making contributions to the Plan and/or on whose behalf contributions are being made by the Company pursuant to the provisions of Article VIII hereinbelow.

(f) "Service in the Armed Forces" means service in the land, naval, air or other military forces of the United States of America.

(g) "Leave of Absence" means absence of any Employee from the active service of the Employer, either with the consent of the Employer, or by reason of the Employee's Service in the Armed Forces.

(h) "Continuous Service" means continuous employment by the Employer of an Employee, which is unbroken except for Leaves of Absence; provided, however, that any absence from the service of the Employer other than during a Leave of Absence shall be considered a termination of employment.

(i) "Totally and Permanently Disabled" means having a physical or mental condition, either occupational or non-occupational in cause, which, as determined by the Retirement Committee provided for herein, on the basis of medical evidence or other showings satisfactory to said committee, wholly disables a person from engaging in any occupation, in any capacity, for wages or profit, and which, as similarly determined, will be permanent and continuous during the remainder of such person's lifetime; provided, however, that no Participant shall be deemed to be Totally and Permanently Disabled if in the opinion of the Retirement Committee his disability (1) results from the excessive and habitual use of intoxicants, drugs or narcotics; (2) was contracted, suffered or incurred while he was engaged in a felonious enterprise or resulted therefrom; (3) results from an intentionally self-inflicted injury; or (4) results from injury or disease contracted, suffered or incurred while engaged in Service in the Armed Forces; and provided, further, that the Retirement Committee, whenever it deems such procedure appropriate with respect to any Participant, may defer making its determination as to whether such Participant is or is not Totally and Permanently Disabled for a period not to exceed six months after the date upon which he last performed work for the Employer on a regular basis.

(j) "Trust Agreement," "Trust," "Trustee" and "Trust Fund" mean respectively the trust agreement provided for in a separate agreement, the trust created and established by such trust agreement, and the trustee and trust fund provided for therein, all as more fully described in Article IX hereof.

(k) "Insured Retirement Plan" means the Dallas Transit Employees Retirement and Death Benefit Plan Agreement with Southwestern Life Insurance Company (Policy No. 685000, as amended, issued by said company effective as of December 30, 1946).

(l) "Normal Retirement Date" means, in the case of each Participant, the first day of the calendar month next following his sixty-fifth birthday.

(m) "Termination Date" means, as to each Participant, the date upon which the period of his Continuous Service is terminated for any reason or cause, including retirement.

(n) "Retirement Committee" means the committee provided for in this agreement.

(o) "Designated Beneficiary" means with respect to each Participant either (1) the person or persons designated by him as such or (2) in the event he dies without being survived by any person so designated by him, then his estate.

(p) "Effective Date" means July 1, 1960.

(q) "Base Monthly Salary," for the purpose of this Plan, means the regular hourly wage rate of such Employee, multiplied by the number of hours in his normal work week, multiplied by 52 and divided by 12. The normal work week for all Participants shall be forty hours, unless changed by mutual agreement of the Employer and the Union. For all purposes of this Plan, no increases in Base Monthly Salary occurring within two years of Normal Retirement Date, and no decreases in Base Monthly Salary occurring within five years of Normal Retirement Date shall be taken into consideration .

(r) "Union" means the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 1338.

(s) Pronouns of masculine gender refer to persons of either sex.

(t) "Actuary" means a Fellow or Associate of the Society of Actuaries appointed by the Retirement Committee to determine costs or contingent liabilities under this Plan.

(u) "Retired Employee" means only a person who was employed by the Company and who has received and is currently receiving monthly benefits under this plan.

ARTICLE II

EMPLOYEES ELIGIBLE FOR BENEFITS

Section 2.01. Persons Eligible. After having executed and delivered to the Retirement Committee a written application in such form as the Company may prescribe, indicating acceptance of the provisions of the Plan as then constituted or thereafter amended, the following persons shall be eligible to participate in the Plan, and under the following conditions:

(a) Each Employee who on the Effective Date is either (1) a former participant in the Insured Retirement Plan, who has not passed Normal Retirement Date or (2) an Employee who has completed a minimum of three years of Continuous Service with the Employer, and who was eligible to join the Insured Retirement Plan but did not do so, or who was eligible but could not pass the physical examination required for the death benefits.

(b) Each other Employee who, on or after the Effective Date, is under the actual age of 64.5 years, and who has completed a minimum of three years of Continuous Service with the Employer.

In order to become a Participant in the Plan each eligible Employee must authorize the Company in writing to deduct from his salary the contributions required of him as provided in Article VIII hereof. Such written authorization must be filed with the Employer before the Effective Date by all Employees participating in the Insured Retirement Plan unless such Employee is on authorized leave of absence or on active duty with the Armed Services; in that event such Employee will have sixty (60) days upon rejoining the Company for full time service to file and participate in the Plan. All other employees who become eligible for the Plan and who elect not to participate within sixty (60) days will be permitted to join at some other time during their employment with the Company; provided, however, such Employees will not be entitled to any of the minimum benefits offered by the Plan and must also pass a physical examination given by an authorized medical doctor designated by the Retirement Committee. When an application and authorization to deduct contributions is so filed by an eligible Employee returning to the Company as an Employee from authorized Leave of Absence or active duty with the Armed Services, who has successfully passed a physical examination as required by the Company of all returning employees, given by an authorized medical doctor designated by the Company, he shall thereupon become a Participant, and as such shall be entitled to the benefits hereunder, effective as of the first day of the month next following such filing, if then in active service; otherwise, on the first day of the month next following his return to active service.

ARTICLE III

Retirement Benefits

Section 3.01. Basic Formula. Each Participant retiring from the service of the Employer on his Normal Retirement Date shall, commencing on said date, be entitled to receive for the period of time specified in this Plan, monthly retirement income as follows:

(a) For Employees eligible under Section 2.01 (a) (1)

(i) An amount equal to the benefits accrued while a participant in the Insured Retirement Plan which was earned with respect to service between the date of joining the Insured Retirement Plan and the Effective Date of this Plan, increased by ten percent (10%) plus,

(ii) For each year of service as a Participant in this Plan up to Normal Retirement Date, one and thirty-five one-hundredths per cent (1.35%) of the Base Monthly Salary for each such year.

(b) For all other Employees eligible for benefits under this Plan, one and thirty-five one-hundredths per cent (1.35%) of the Base Monthly Salary for each year of participation in this Plan prior to Normal Retirement Date.

(c) An Employee who enrolls in this Plan (and if eligible, enrolled in the Insured Retirement Plan) on the date when first eligible and who has twenty-five or more years of Continuous Service at Normal Retirement Date will be paid from the Trust a minimum amount of Sixty Dollars ($60.00) per month (such minimum to include amounts payable under the Insured Retirement Plan). For a Participant with Continuous Service of less than twenty-five (25) years but more than fifteen (15) years and who meets other requirements of this paragraph, such Participant shall receive the minimum amount of retirement pay reduced proportionately for each year under twenty-five (25) years Continuous Service as computed in Exhibit I attached hereto.

(d) If a Participant's job status in the Company subsequently changes from a classification wherein he is eligible for Union Membership to a classification wherein he is not eligible for Union membership, then for purposes of Sections 3.01 (c), 3.04 and 6.01 of this Plan, his Continuous Service as defined herein shall be deemed to continue for so long as such Participant is within the definition of an Employee as defined herein without the requirement of Union membership eligibility; but for all purposes of this Plan his Base Monthly Salary after such change in job status shall be zero. If any Participant's job status with the Company subsequently changes from a classification wherein he is not eligible for Union membership to a classification wherein he is eligible for Union membership, then for purposes of Section 3.01 (c), 3.04 and 6.01 of this Plan, his Continuous Service as defined herein shall be deemed to include Continuous Service prior to such change in job status as if such definition of Continuous Service did not require Union membership eligibility; but for all purposes of this Plan his Base Monthly Salary prior to such change in job status shall be zero.

(e) Upon receipt by the Retirement Committee of due notice and proof in writing that a Participant is living on his Normal Retirement Date and is retiring from the service of the Employer, the Trustee will pay directly to him the monthly retirement income herein provided. The first payment of monthly retirement income shall be payable on the Participant's Normal Retirement Date, and a payment of an equal amount shall be made on the first day of each calendar month thereafter during the lifetime of the Participant, terminating with last payment due prior to the Participant's death, except that if the Participant dies before having received such income for a period of sixty (60) months, then the payments for the remainder of such period shall be continued to the Participant's Designated Beneficiary, unless such Designated Beneficiary shall elect to have the commuted value of the payments for the remainder of the sixty (60) months' period based on interest at the rate of three and one-half per cent (3½%) per annum, compounded annually, paid in one sum.

Upon receipt by the Retirement Committee of notice in writing that a Participant is living on Normal Retirement Date, and is not retiring from the service of the Employer, the monthly retirement income herein provided shall not be paid to the Participant, but the monthly retirement income payments shall be held for such Participant until paid as hereinafter provided; and during the period of deferment, interest shall be added at the rate of three per cent (3%) per annum, compounded annually. In the event of the death of the Participant during the period of deferment, the amount held for the credit of such a Participant shall be paid to his Designated Beneficiary in one lump sum; and for the purpose of determining the guaranteed period of payment, the deferred monthly retirement income payments shall be deemed to have been made to the Participant beginning on his Normal Retirement Date.

Upon receipt by the Retirement Committee of due notice and proof in writing that a Participant who did not retire on his Normal Retirement Date is retiring from the service of the Employer, the Trustee shall pay the subsequent normal retirement income payments to him as they respectively become due. The amount held to the credit of such Participant for a guaranteed period of five (5) years, and so long thereafter as the Participant may live.

Section 3.02. Participants Working After Normal Retirement Date. A Participant in the employ of the Company on his Normal Retirement Date shall be presumed to be terminating his continuous service unless written permission to continue active employment is granted by the Company.

Section 3.03. Optional Methods of Settlement. In lieu of normal retirement income specified in Section 3.01, a Participant by written request filed with Employer and transmitted prior to the due date of the first income payment, may elect a modified amount of life income in accordance with the following optional plans:

Option 1. A specified monthly amount for life under which payments terminate with the last payment due prior to the Participant's death, as indicated in Exhibit II attached hereto.

Option 2. A specified monthly amount for life, with the provision that if the Participant should die before having received payments for one hundred twenty (120) months, then the payments for the remainder of such periods shall be continued to the Participant's Designated Beneficiary, unless such Designated Beneficiary should elect to have the commuted value of such remaining payments, based on interest at the rate of three and one-half per cent (3½%) per annum compounded annually, paid in one sum, as indicated in Exhibit III attached hereto.

Option 3. A joint life and survivor annuity, under which monthly payments will be made while both the Participant and his Designated Beneficiary, or either of them, are alive, with the provision that if both the Participant and his Designated Beneficiary should die before payments have been made to them or to the survivor of them for sixty (60) months, then the payments for the remainder of such period shall continue to the person designated by the Participant to receive such payments, until a total of sixty (60) payments shall have been made, as indicated in Exhibit IV attached hereto.

Section 304. Early Retirement. Any Participant who has both attained his fifty-fifth (55th) birthday and completed thirty (30) full years of Continuous Service is authorized an early retirement. The Early Retirement Date shall be the first day of any calendar month prior to his Normal

Retirement Date. Commencing with the effective date of any such Early Retirement, the retiring Participant shall be entitled to receive monthly retirement income equal to his accrued benefit otherwise payable in the same manner at Normal Retirement Date, at the time of such Early Retirement, as computed in Article VI, Section 6.01, paragraphs (a) and (b), reduced by five per cent (5%) for each year by which actual retirement date precedes Normal Retirement Date. The retirement income payable in the event of Early Retirement shall be payable on the first day of each month. The first payment of an equal amount shall be paid on the first calendar month thereafter during the lifetime of the Participant and terminating with the last payment due prior to the Participant's death. If the Participant taking Early Retirement does not choose to receive these monthly retirement payments, he is entitled to receive in lieu thereof in one lump sum his own contributions with interest thereon at the rate of two per cent (2%) per annum compounded annually.

(a) *Total and Permanent Disability*. A Participant whose employment is terminated after twenty (20) years of Continuous Service, who has attained his fiftieth birthday and who meets all requirements outlined in this Plan for total and permanent disability payments may elect to have his monthly retirement income begin on the first day of the month following his termination of employment. The monthly amount of such retirement income shall be equal to his accrued benefit otherwise payable at Normal Retirement Date at the time of such disability retirement as computed in Article VI, Section 6.01, paragraphs (a) and (b) reduced by five per cent (5%) for each year by which actual retirement precedes Normal Retirement Date, but those Participants who enroll in this Plan (and if eligible enrolled in the Insured Retirement Plan) on the date when first eligible shall not receive less than Fifty Dollars ($50.00) per month (such minimum to include amounts payable under Insured Retirement Plan); provided, however, that no Participant is eligible for this minimum amount unless such Participant joined this Plan within sixty (60) days of becoming eligible, and also if such Participant was eligible to join the Insured Retirement Plan, he joined it within sixty (60) days of becoming eligible.

The monthly retirement income to which a Participant is entitled in the event of his disability retirement shall be payable on the first day of each month. The first payment shall be made on the Participant's Disability Retirement Date and the last payment shall be (a) if the Participant recovers from the disability prior to his Normal Retirement Date, the payment due next preceding the date of such recovery, or (b) if the Participant dies without recovering from his disability, the payment due next preceding his death; however, in no event shall the total benefits paid be less than the Participant's own contributions, together with two per cent (2%) interest thereon. In the case of a disabled Participant who recovers from disability and re-enters the service of the Company, he will be considered as a new employee for all purposes. In lieu of receiving this monthly disability income, the Participant may have the option at time of disabilty retirement date of having paid to him in one lump sum all of his contributions under the Plan, plus two per cent (2%) interest compounded annually.

(b) *Proof of Disability and Income.* The Retirement Committee, before approving the payment of any disability pension, shall require proof in such form as the Retirement Committee may decide, including the certificate of a duly licensed medical physician, that the Participant has become Totally and Permanently disabled, as provided herein, and is unable to engage in any employment or business for wage or profit in any capacity. At least every six (6) months after the commencement of a disability pension, or more frequently, the Retirement Committee may require proof of the continued disability of the Participant and shall determine his income, if any, from his employment or business. Any earnings from said employment or business shall be charged against the benefits already paid to him and he shall immediately become ineligible to receive further benefits until he has repaid the total amount of earnings and/or benefits to the Trust and has proved to the satisfaction of the Retirement Committee that he is again Totally and Permanently Disabled.

ARTICLE IV

DEATH BENEFITS PRIOR TO NORMAL RETIREMENT DATE

Section 4.01 In case any Participant dies while in the active service of the Employer, or while on Leave of Absence or Service in the Armed Forces, before such Participant reaches his Normal Retirement Date, or before he is in any way entitled to any of the aforementioned monthly retirement benefits or benefits referred to in Section 6.01, paragraph (b), such Participant's Designated Beneficiary shall be entitled to receive out of the Trust Fund a sum equal to all of the contributions of the Participant, plus two per cent (2%) interest, compounded annually.

ARTICLE V

TERMINATION OF EMPLOYMENT AND WITHDRAWAL

Section 5.01. Withdrawal of Participant. Except as provided in Article VI hereof, the coverage of any Participant who at the time of his termination of employment is not qualified under any of the foregoing provisions of this Plan to receive benefits hereunder, shall cease upon the termination of such Participant's employment; and in lieu thereof, he shall be entitled to the following:

If the employment of such Participant is terminated prior to the completion of thirty (30) full years of Continuous Service, except if the Participant is Totally and Permanently Disabled, his coverages hereunder shall cease and he shall be entitled to receive from the Trust only his own contributions, with interest thereon at the rate of two per cent (2%) per annum, compounded annually.

A Participant may not withdraw from the Plan while he is in the service of the Employer. If the employment of a Participant is terminated and he later resumes employment with the Employer, he may again become a Participant hereunder on the basis of a new Employee, and without credit for or regard to his prior service of participation.

ARTICLE VI

Vested Rights of Participants

Section 6.01. Rights After Age Fifty and Twenty Years of Continuous Service. In addition to any and all other rights and benefits conferred hereby upon Participants in the Plan, each Participant whose service with the Employer is terminated for any reason other than for early retirement, prior to his Normal Retirement Date, but after he has completed at least twenty (20) full years of Continuous Service and attained his fiftieth birthday, shall not be considered a Retired Employee but shall have vested in him the unqualified right to receive, commencing on his Normal Retirement Date, monthly retirement income identical in form and amount to that which he would have been entitled to receive if his Normal Retirement Date had coincided with his termination date, provided that:

(a) The computation period utilized for purposes of computing the Participant's Base Monthly Salary shall be only that preceding the termination of his employment; and

(b) All periods of time after the date of his employment terminated shall be excluded for purposes of computing Continuous Service. In the event any such Participant dies after his service with the Employer is terminated, but prior to his Normal Retirement

Date, his Designated Beneficiary shall be entitled to receive in one lump sum out of the Trust Fund, within thirty (30) days after the date of the Participant's death, an amount equal to the contributions paid into the Plan by the Participant, plus two per cent (2%) interest per annum, compounded annually.

ARTICLE VII

FORM AND PAYMENT OF RETIREMENT INCOME BENEFITS

Section 7.01. Whenever a Participant becomes entitled to commence receiving monthly retirement income benefits pursuant to the provisions of the Plan, the Retirement Committee shall cause monthly benefit payments to be paid out of the Trust Fund directly to the Participant.

ARTICLE VIII

EMPLOYER'S AND PARTICIPANT'S CONTRIBUTIONS

Section 8.01. Contributions. The amount of the Employee's monthly contribution for the first five years of the Plan shall be three per cent (3%) of his Base Monthly Salary. During the first five (5) years of the Plan the Company shall contribute four per cent (4%) of the Base Monthly Salary of each contributing Participant. Thereafter Participants and Employer will proportionately increase or decrease their contributions so that the Plan will be on an actuarially sound basis as determined or recommended by the Actuary, but in no event shall the Company's contributions be more than the amount deductible for Federal income tax purposes.

If a Participant in the Plan is on active duty with the Armed Services or is on authorized leave of absence from the service of the Company, contributions during Participant's absence will be made on the basis of the Participant's last contribution prior to the date of authorized leave. The Company will pay its contributions to the Plan as if Participant was rendering his regular service. The Company will also pay the Participant's contribution to the Plan during his authorized absence; provided, however, that in the event such a Participant does not return to active employment with the Company or if the Participant returns but terminates his employment before attaining any vested rights in the Plan, such Participant will be entitled to withdraw from the Plan only the amount contributed by himself, plus two per cent (2%) interest thereon compounded annually. Any amount accrued to his benefit that was contributed by the Employer shall be credited to Employer's entire contribution to the Plan for the year or month that Participant's employment terminated.

ARTICLE IX

TRUST AGREEMENT

Section 9.01. Establishment of Trust Fund. Effective as of the Effective Date of the Plan, the Company and the Union shall enter into a Trust Agreement, which shall:

(a) Establish a Trust Fund for the exclusive benefit of the Participants and their Designated Beneficiaries, into which all contributions and any sum transferred to such Trust Fund by Southwestern Life Insurance Company under the Insured Retirement Plan, are to be paid, and through which the benefits called for by the Plan are to be provided;

(b) Designate as Trustee of such Trust Fund a bank having trust powers or a trust company conforming to the requirements of this Agreement, including a requirement that no funds contributed by the Company may ever revert to the Company prior to the satisfaction of all liabilities with respect to Employees and their Designated Beneficiaries under the Trust.

(c) Provide for the receipt, holding, investment, administration and disbursement by the Trustee of the funds constituting the Trust Fund, from time to time;

(d) Authorize the Company from time to time to modify the Trust Agreement or any of the provisions thereof in keeping with the purpose of the Plan, and to remove the Trustee and designate a successor thereto; and

(e) Contain such other and additional provisions as may be necessary or appropriate for the purposes of effectuating the objectives of the Plan and the proper handling of the Trust Fund.

Section 9.02. Trust Fund Sole Source of Benefits. The benefits accruing to Participants and their beneficiaries under the Plan shall only be such as can be provided by the Trust Fund, and there shall be no liability or obligation on the part of the Company, the Union, the Retirement Committee or the Actuary to make any further contributions in the event the Plan is at any time terminated. No liability for the payment of benefits under the Plan shall ever be imposed upon the Company, any officer, director, employee or stockholder of the Company, the Union, any officer or committeeman of the Union or any member of the Retirement Committee or the Actuary.

ARTICLE X

Administration of Plan

Section 10.01. Constitution of Retirement Committee. For the purposes of administering the Plan there shall be established a Retirement Committee consisting of a chairman and three (3) additional members. Two of the members of this Retirement Committee shall be designated by the Company and two (2) shall be designated by the Union. The four (4) participating members shall elect their chairman. In addition, the Company shall designate an alternate member and the Union shall designate an alternate member. Any member of the Retirement Committee may resign at any time by delivering his written resignation to the Company and notifying the Trustee. Members of the Retirement Committee shall serve without bond unless both the Company and the Union shall require otherwise, in which event the premium therefor shall be paid out of the Trust Fund.

Section 10.02. Action by Retirement Committee. Except as specifically otherwise provided herein, all acts, decisions and determinations of the Retirement Committee shall be made with the consent and approval of a majority of the members thereof, expressed by vote at a meeting of all members of said Committee, or in writing without such a meeting. Such majority action shall be binding upon all parties affected thereby. Furthermore, if a majority of the Committee is unable to agree, the matter shall be taken up by the Committee with the Actuary of the Plan. If his decision gives majority action to the question at hand, the decision shall be final and binding. Any act, decision or determination of the Retirement Committee shall be sufficient evidence if expressed in a written instrument, letter or memorandum signed by the chairman, or any member thereof; and all parties, including, without being limited to, the Trustee, shall be entitled to rely thereon.

Section 10.03. Matters Affecting Retirement Committee Members. A member of the Retirement Committee may not vote or decide upon any matter relating solely to himself or in which his individual right or claim to any benefit under the Plan is particularly involved. In any case where a member of the Retirement Committee is so disqualified from acting, the alternate member shall vote in his stead; and said alternate or substitute member shall exercise all the powers of the disqualified member concerning the matter with respect to which he is disqualified.

Section 10.04. Powers of Retirement Committee. The Retirement Committee shall have the following powers, duties and functions, in addition to those specified herein:

(a) To determine, when a Participant's service with the Company, is terminated, whether by retirement, death or otherwise, the amount and character of the benefits which are payable under the terms of the Plan, and the person or persons to whom such benefits are to be paid;

(b) To make such rules and regulations, in conformity to the provisions of the Plan, as may be necessary or appropriate for the administration thereof;

(c) To construe all terms, provisions, conditions and limitations of the Plan; to correct any defects, supply any omissions and reconcile any inconsistency that may appear in the Plan, and to cause equitable adjustment to be made for any mistakes or errors occurring in the administration of the Plan, all in such manner and to such extent as the Retirement Committee may deem expedient in order to effectuate the Plan's purposes;

(d) To give to the Trustee such instructions or interpretations as may be necessary or appropriate in accordance with the terms of the Plan and the Trust Agreement; and

(e) To make all of the other decisions and determinations which the provisions of the Plan specify are to be made by the Retirement Committee.

The foregoing list of express powers is not intended to be either complete or exclusive, and the Retirement Committee shall have, in addition, all such powers as it may reasonably determine from time to time are necessary or appropriate to the full performance of its duties under the Plan and the Trust Agreement, except as otherwise specifically provided herein. A decision, action or judgment of the Retirement Committee on any matter or question arising hereunder in connection with the exercise of any of its powers shall be final, binding and conclusive on all parties concerned.

Section 10.05. Liability of Retirement Committee. A member of the Retirement Committee shall be liable only for his own misconduct through fraud or bad faith, or for his own gross negligence. The Retirement Committee, and any of its members individually, shall be entitled to rely and shall be protected in relying, as to legal matters, including the proper interpretation of the Plan and other documents, upon the advice of counsel (who may be counsel for the Company) selected by such Committee or by him in good faith, and as to matters of fact upon written statements or representations believed in good faith to be signed and delivered by or on behalf of persons or corporations having knowledge of such fact or facts so long as the representation relied upon is not known to be untrue.

Section 10.06. Disputes. In the event any dispute shall arise between the Retirement Committee and any member entitled or claiming to be entitled to receive benefits under the Plan, in either an individual or representative capacity, the Retirement Committee, in the exercise of its discretion, may give written notice thereof to the Trustee. Following receipt of any such notice of any such advice from the Retirement Committee, no payment of benefits shall be made by the Trustee to any person affected by the dispute until such dispute shall have been finally adjudicated by a court of competent jurisdiction, or otherwise settled to the satisfaction of all parties concerned, or until indemnity in form and amount satisfactory to the Retirement Committee and to the Trustee shall have been received.

Section 10.07. Secretary of Retirement Committee. The Retirement Committee shall appoint a secretary who may, but need not be, a member of such committee, and may, but need not be, an employee of the Company, such secretary to serve until his successor shall be appointed in like manner. Such secretary may resign at any time upon delivering his written resignation to any member of said committee, and may be removed at any time by said committee. In addition to any other functions and responsibilities which may be delegated to him by the Retirement Committee, such secretary shall maintain all records deemed necessary or appropriate by said Committee for the efficient administration of the Plan, and shall have the duty of preparing, executing and publishing on behalf of the Retirement Committee as administrator of the Plan, within the meaning of the Federal Welfare and Pension Plans Disclosure Act, all descriptions of the Plan and annual reports respecting same which may be required by the provision of said Act.

Section 10.08. Notices to Retirement Committee. Any notice or information which, according to the terms of the Plan or the rules of the Retirement Committee, is to be delivered to said committee, shall be deemed to have been so delivered whenever received by the secretary or chairman of said committee, or by any other member thereof authorized by said committee to accept notices on its behalf.

Section 10.09. Trust Fund Expenses. All costs, expenses and fees, as outlined in the Trust Agreement, shall be payable solely out of the Trust Fund.

ARTICLE XI

INFORMATION TO BE FURNISHED BY PARTICIPANTS

Section 11.01. Information Required by Retirement Committee. Each Participant shall furnish to the Retirement Committee such information as said committee may consider necessary or desirable for purposes of administering the Plan, and the payment of benefits under the Plan to, or with respect to, any Participant shall be conditional upon his promptly furnishing such true and complete information as the Retirement Committee may request from time to time.

Section 11.02. Proof of Age. Each Participant shall submit proof of his age (and in case of his election of the Joint Survivorship Option referred to in Option 3, Section 3.03 hereof, proof of the age of his Designated Beneficiary) to the Retirement Committee at such time as required by said committee. The Retirement Committee, if such proof of age is not submitted as required, may use such information as is deemed by it to be reliable, regardless of the source of such information. Any adjustment subsequently required by reason of a prior lack of proof or misstatement of the age of any person entitled to benefits hereunder, whether made by the affected Participant or otherwise, shall be effected in such manner and to such an extent as the Retirement Committee deems equitable under the circumstances.

ARTICLE XII

DESIGNATION OF BENEFICIARIES

Section 12.01. Right to Name and Change Beneficiaries. Each Participant shall have the right, exercisable in the manner and subject to the limitations set forth below in this Article XII, to name as his Designated Beneficiary any person or persons permitted by law to be so designated by him for purposes of the Plan. Each Participant shall also have the right, exercisable in like manner and subject to the same limitations, from time to time, to change or revoke any nomination previously made by him of a person or persons as his Designated Beneficiary, without notice to the person or persons affected thereby.

Section 12.02. Procedures for Designating Beneficiaries. In order to be effective, any nomination by a Participant of his Designated Beneficiary, and any change in or revocation of any such nomination previously made by him, must be evidenced by written notice signed by the Participant and delivered to the Retirement Committee. The effective date of such election, nomination or revocation shall be the date of such written notice, but no such notice shall create any liability of the Trust or any person with respect to any action taken after such date but before receipt of the same by the Retirement Committee.

ARTICLE XIII

AMENDMENT OR TERMINATION

Section 13.01. Right to Amend Plan. The Company and the Union shall have the right, by mutual consent and by giving sixty (60) days notice as provided in Section 14.10, to amend the Plan to the extent that it may deem advisable after the first three (3) years; provided, however, that (except for an amendment required by the Director of Internal Revenue as a condition of his approval of the Plan, either initially or at any subsequent time, for purposes of permitting the Company's contributions thereto to be and continue to be deductible expenses for Federal income tax purposes) no such amendment shall impair or adversely effect the right of any Participant which has therefore matured hereunder, no such amendment shall increase the duties or responsibilities of the Trustee without its consent thereto given in writing and no such amendment shall permit any funds received by the Trustee from the Insured Retirement Plan to be used for any purpose other than to provide benefits to Participants who were also participants in such Insured Retirement Plan and their beneficiaries, or to pay Trustee's expenses. Any amendment hereof shall be evidenced by a written instrument executed in the name of the Union and of the Company under the respective corporate seals and their proper officer or officers thereunto duly authorized. Upon delivery to the Trustee of such an instrument properly executed by the Company and the Union, the Plan shall be deemed for all purposes to have been amended in the manner and to the extent set forth therein.

Section 13.02. Right of Company to Terminate Plan. The Company is establishing this Plan with the bona fide intention and expectation that from year to year it will be able and deem it advisable to make its contributions as herein provided. The Company realizes, however, that circumstances not now foreseen, or circumstances beyond its control, may make it either impossible or inadvisable to continue to make such contributions. Accordingly, the Company hereby expressly reserves the right to terminate this Plan five (5) years from the Effective Date or any time thereafter by action of its Board of Directors. Any such action shall be evidenced by written instrument executed in the name of the Company under its corporate seal by its proper officer or officers thereunto duly authorized. Promptly following execution of any such instrument an executed copy thereof shall be delivered to the Trustee, the Union and each member of the Retirement Committee, and appropriate notice of the Plan's termination shall also be given as soon as possible thereafter to each person who is then a Participant in the Plan.

Section 13.03. Distribution of Trust Fund on Termination of Plan. Upon any termination of the Plan in accordance with the provisions hereof, all realizable moneys in the Trust Fund shall be applied: First, to payment of all fees and expenses of the Trustee and others incurred incident to liquidation and distribution of the Trust Fund; second, to the purchase of all annuities (if deemed advisable by the Retirement Committee), and the making of all payments which, by reason of any Participant's prior retirement, termination of employment, death or state of being Totally and Permanently Disabled, were, on the termination date of the Plan, subject under its terms to being made to such Participants or their respective Designated Beneficiaries; and, third, to the purchase of annuities providing each Participant then in the service of the Company with monthly retirement income benefits (based in each instance on Continuous Service and Base Monthly Salary to the date of the Plan's termination, and identical in all other respects to the benefits which each such Participant would have been entitled to receive if the Plan had not been terminated and he had remained in the service of his Employer until his Normal Retirement Date) to commence immediately for each Participant who has then attained his Normal Retirement Date, and to commence for each other Participant on his Normal Retirement Date, in the following order of precedence, by groups of Participants, to the extent that such moneys shall be sufficient:

(a) All Participants who have attained Normal Retirement Date on the date of the Plan's termination who have not already begun receiving monthly benefits from the Trust;

(b) All Participants fifty-five (55) years of age or over on the date of the Plan's termination who, as of such date, have had thirty (30) or more years of Continuous Service and are not included in group (a) above; and

(c) All Participants fifty (50) years of age or over on the date of the Plan's termination who, as of such date, have had twenty (20) or more years of Continuous Service and are not included in group (a) or (b) above; and

(d) All Participants covered by the Plan on the date of its termination who are not included in groups (a), (b) or (c) above;

provided, however, if the balance remaining in the Trust Fund is sufficient to permit the purchase of annuities providing a portion, but less than all, of the benefits which the Participants included in any of said groups (a), (b), (c) and (d) are entitled to receive under the foregoing provisions of this Section 13.03, then the benefits to be provided to each Participant in such group, to the exclusion of the succeeding group or groups, if any, shall be reduced proportionately so as to cause the Trust Fund to be exactly exhausted. If, however, the balance remaining in the Trust Fund shall be more than sufficient to provide the benefits which all Participants in each of said groups are entitled to receive under the foregoing provisions of this Section 13.03, then after all such benefits have been provided for, the distribution of any excess funds remaining in the Trust Fund shall be decided by the Retirement Committee with the approval of the Company and the Union.

Section 13.04. Means of Distribution on Termination. Provision of the benefits to Participants contemplated by Section 13.03 hereof shall be accomplished at the direction of the Retirement Committee, either through continuation of the then existing Trust Agreement, or by means of a new Trust Agreement or, with respect to the portion of the Trust Fund then held by the Trustee, through one or more Group Annuity Contracts with one or more Insurers.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Spendthrift Provision. To the extent permitted by law, none of the benefits, payments, accounts or funds contemplated by the Plan shall be subject to any claim of the creditors of any Participant or Designated Beneficiary hereunder, attachment, garnishment or other legal or equitable process by or on behalf of any such creditor, or in any wise be liable for or subject to the debts, contracts, liabilities, engagements or torts of any Participant or Designated Beneficiary, and all payments made hereunder shall be deliverable only to the person or persons entitled thereto under the terms hereof. Furthermore, no Participant or Designated Beneficiary hereunder shall have the right to alienate, anticipate, pledge, encumber, sell or assign any of such benefits, payments, accounts or funds or any interest of the Participant or Designated Beneficiary in any of the same, and any attempt by any such person so to do shall be void.

Section 14.02. Unlocatable Persons. In the event the Retirement Committee is unable to locate any Participant or Designated Beneficiary having benefits payable to him under the terms of the Plan after reasonable periodic efforts for a period of two years after such benefits first become payable, the interest of such person in the Plan and the benefits to be provided thereby shall at such time thereafter as so declared by the Retirement Committee be deemed to have been abandoned and such Participant or Designated Beneficiary shall have no further claim thereto or interest therein.

Section 14.03. Infants and Incompetents. If any person to whom benefits are payable under the terms of the Plan is an infant, or if the Retirement Committee determines that any person to whom such benefits are payable is incompetent by reason of mental disability, the Retirement Committee shall be authorized to cause the payments becoming due to such person to be made to another for his benefit, without responsibility of the Retirement Committee or the Trustee to see to the proper application of such payments. Payments made pursuant to such authority shall operate as a complete discharge of the Trust Fund, the Trustee, the Company, the Retirement Committee and each member of such committee.

Section 14.04. Qualification Under I.R.C. Sections 401 and 501. This Plan and the Trust provided for herein are hereby designated as being intended to qualify under Sections 401 and 501 of the Internal Revenue Code of 1954, as amended or hereafter superseded, and as being intended to conform at all times to applicable requirements of law and/or regulations and orders of duly constituted governmental authorities having jurisdiction. Accordingly, in the event any provision of this Plan is subject at any time to more than one construction, one of which will permit the Plan so to qualify and conform, then that construction will prevail.

Section 14.05. Texas Law to Govern. Consistently with the provisions of Section 14.04 hereof, this Plan shall be construed, administered and governed in all respects, including, but without being limited to the determination of substantive rights hereunder, under and by the laws of the State of Texas.

Section 14.06. Severability of Provisions. The provisions hereof are intended to be severable, and in case any such provision (s) shall be held to be illegal, invalid or unenforceable for any reason, the illegality, invalidity or unenforceability thereof shall not affect the remaining provisions of the Plan, all of which shall continue to be applied and enforced as if the illegal, invalid or unenforceable provision (s) had never been inserted herein.

Section 14.07. Numbering and Headings for Convenience Only. This instrument, for convenience only, has been divided into articles and sections; but all rights, powers, duties, privileges and other legal relations arising herefrom shall be determined from this instrument as an entirety and without regard to the division hereof into articles and sections or to the headings prefixed to said subdivisions hereof.

Section 14.08. Special Provisions as to High-Paid Participants. Any other provision hereof to the contrary not withstanding, if at any time during the first ten (10) years after the Effective Date of the Plan the full current costs of the Plan (as defined in applicable Treasury Department regulations or rulings) have not been met by the Company or the Plan is for any reason terminated, no Participant who on the Effective Date of the Plan was one of the twenty-five (25) highest paid Employees of the Company, and whose retirement income benefits under the Plan will exceed One Hundred Twenty-five Dollars ($125.00) per month on the Standard Basis shall be entitled to receive retirement income benefits hereunder except to the extent that such benefits may be provided for by Contributions of the Company not exceeding the larger of the following amounts:

(a) Twenty Thousand Dollars ($20,000.00); or

(b) An amount computed by multiplying (1) the number of years which have elapsed between the Effective Date of the Plan and the date upon which the full current cost of the Plan failed to be met or the Plan was terminated by (2) whichever is the lesser of

(i) Ten Thousand Dollars ($10,000.00) or

(ii) Twenty per cent (20%) of the amount of the Participant's average regular annual compensation received from his Employer either during his last five (5) years of Continuous Service immediately preceding the date this Section 14.08 becomes operative or during the entire period of his Continuous Service, whichever shall be the shorter.

The foregoing provisions of this Section 14.08 shall have no restrictive effect upon the amount of Death Benefits or Disability Benefits which otherwise would be payable under the provisions of the Plan. Neither shall the provisions of this Section 14.08 operate to restrict the payment of full retirement benefits to any participant during any period in which the Plan remains in full effect and the full current costs thereof have been met, or to restrict, in the case of any Participant who dies during any such period, the continued payment to his Designated Beneficiary of the full amount of the benefits which otherwise would be payable.

Section 14.09. All benefits hereunder shall be in addition to the benefits available under the Federal Social Security Act.

Section 14.10. Term of Agreement. This Plan shall become effective on July 1, 1960, if approved by Internal Revenue Service no later than June 1, 1960, and continue in effect thereafter from year to year, unless written notice of desire to terminate or modify is given by either party to the other not less than sixty (60) days prior to the expiration of the primary term hereof, or not less than sixty (60) days prior to the expiration of any extended yearly period thereafter.

IN WITNESS WHEREOF, the Company and the Union have caused these presents to be executed by their duly authorized officers and their respective corporate seals to be hereunto affixed this 6th day of April, 1960.

Executed on this 6th day of April, 1960.

DALLAS TRANSFER COMPANY

By/s/ LEON TATE
President

DIVISION 1338, AMALGAMATED
ASSOCIATION OF STREET, ELECTRIC
RAILWAY & MOTOR COACH
EMPLOYEES OF AMERICA

By/s/ GEO. ADKINS

ATTEST:

/s/ PHIL KIRCHHAINE
Secretary-Treasurer

ATTEST:

/s/ E. R. THOMPSON
Secretary

APPENDIX C

Trust Agreement between Dallas Transit Company and Division 1338 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, and Mercantile National Bank at Dallas

THIS AGREEMENT made and entered into this 1st day of July, 1960, by and between DALLAS TRANSIT COMPANY, a Texas corporation (hereinafter referred to as the "Company"), DIVISION 1338 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, a labor organization, (hereinafter referred to as the "Union"), and MERCANTILE NATIONAL BANK AT DALLAS, a national banking corporation, as trustee (hereinafter referred to as the "Trustee");

WITNESSETH:

WHEREAS, under even date herewith but effective as of July 1, 1960, the Company and the Union have adopted a certain plan known as the "TRUSTEED RETIREMENT PLAN FOR UNION EMPLOYEES OF DALLAS TRANSIT COMPANY" (hereinafter referred to as the "Plan"), a copy of which is attached hereto as Exhibit "A" and made a part hereof, to provide certain retirement income and disability benefits for all eligible employees (such eligible employees being hereinafter collectively referred to as the "Participants"); and

WHEREAS, it is provided in the Plan that the contributions made by the Company and the Participants pursuant thereto are to be placed in trust for the exclusive benefit of the Participants and their beneficiaries, the requisite qualifications of the Trustee of such trust being specified in Article Nine of the Plan; and

WHEREAS, Mercantile National Bank at Dallas meets the requirements of said Article Nine, and has been selected by the Company and the Union to serve as Trustee under the Plan, and is willing to serve as such Trustee;

Now Therefore, in consideration of the mutual undertakings of the parties hereto and for the purpose of implementing and carrying out the provisions of the Plan, it is hereby agreed as follows:

ARTICLE I

Name

The Company and the Union hereby establish with the Trustee a trust to be known as "Trust for the Trusteed Retirement Plan for Union Employees of Dallas Transit Company."

ARTICLE II

Contributions to Trust Fund

Subject to the provisions of Article VIII hereof, the Company shall deliver or cause to be delivered in accordance with Article VIII, Section 8.01 of the Plan such amounts of cash as specified in the Plan. The Trustee shall accept any cash and property delivered to it by the Company and shall issue a receipt to the Company and the Retirement Committee evidencing such delivery. All such amounts received by the Trustee from the Company shall constitute one common fund and may be commingled. Unless the context clearly implies or indicates the contrary, the term "Trust Fund" as used herein intended to refer to all property of every kind held by the Trustee, from time to time, pursuant to this agreement. The Trustee shall have no duty, express or implied, to compel any payment to be made to it by the Company or Union Employees, or otherwise be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities or obligations under the Plan, and shall be accountable only for cash, income and other property actually received by it.

ARTICLE III

PAYMENTS FROM THE TRUST FUND

1. Payments shall be made from the Trust Fund by the Trustee to such persons or corporations in such manner, at such time, and in such amounts as the Retirement Committee established under the Plan, hereinafter referred to as the "Retirement Committee", may from time to time direct in writing; provided that the Trustee may withhold compliance with the Retirement Committee's directions to the extent that, and so long as, the Trustee shall deem such withholding necessary to insure payment of the Trustee's expenses or to protect the Trustees against liability for taxes or other liability.

2. The Company and the Union shall promptly notify the Trustee of the names of the initial chairman, members and secretary of the Retirement Committee and of any subsequent changes if any thereof. In the absence of notification of changes, the Trustee may assume that said chairman, members and secretary remain the same as last reported to the Trustee. The Retirement Committee shall furnish the Trustee with all the necessary factual information required by it to perform its duties as Trustee hereunder, and the Trustee shall not be required to verify the facts so furnished. The Trustee, in following the directions of the Retirement Committee, shall be authorized to act upon written instructions signed by a majority of the Retirement Committee, and shall not be liable for its acts with respect to payments from the Trust Fund when following such instructions or directions, or for failure to act in the absence of such instructions or directions. The Trustee shall not be liable or responsible for any payment made by it in good faith and in the exercise of reasonable care without knowledge of the changed conditions or status of the payee.

ARTICLE IV

INVESTMENT OF THE TRUST FUND

1. The Trust Fund, except such estimated amounts as in the opinion of the Trustee are required for current payments and expenses, shall be invested and re-invested by the Trustee without distinction between principal and income. Subject to the provisions of Paragraph 2 of this Article IV, the Trustee is authorized to invest all or any portion of the Trust Fund in any property, real, personal or mixed, in which an individual may invest his own funds. In making investments, the Trustee shall exercise the judgment and care in the circumstances then prevailing, which ment of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The Trustee may, to the extent it deems advisable, invest in any common trust fund maintained by the Trustee, or any successor Trustee. The Trustee may hold any portion of the Trust Fund in cash pending investment or payment of expenses or benefits without liability for interest. The Trustee shall not be liable for the making, retaining, or selling of any investment or reinvestment made by it as herein provided, or for any loss to or diminution of the Trust Fund, except such as are due to its own negligence, willful misconduct, or lack of good faith. The Trustee may, from time to time, consult with counsel (who may be counsel to the Company), and shall be fully protected in acting upon advice of counsel.

2. The Retirement Committee shall have the right, but shall be under no obligation, to direct the Trustee to purchase, retain, or sell such property, real or personal, as the Retirement Committee, in its sole discretion, shall designate and the Trustee shall not be liable for its acts in following such directions. Except to the extent that the Trustee from time to time receives directions under this paragraph, the Trustee shall be authorized to manage, invest and reinvest the Trust Fund without regard to this paragraph.

3. The Declaration of Trust executed by Mercantile National Bank at Dallas on April 10, 1956, creating the Mercantile National Bank Investment Fund for Qualified Employee Benefit Plans is hereby incorporated by reference and made a part of this agreement. Notwithstanding any other provision of this agreement, the Trustee may cause any part or all of the moneys and assets of this trust to be commingled with the moneys and assets of trusts created by others by causing such moneys and assets to be invested as a part of either or both of the funds created by said Declaration of Trust, and the money and assets of this trust so added to either of said funds at any time shall be subject to all the provisions of said Declaration of Trust as it is amended from time to time; provided, however, that nothing in the above shall limit or restrict the rights of the Retirement Committee as set forth in Paragraph 2 of this Article IV.

ARTICLE V

Powers of the Trustee

Subject to the provisions of Paragraph 2 of Article IV, the Trustee is authorized and empowered:

(a) To sell, exchange, convey, transfer or dispose of and also to grant options with respect to any property, whether real or personal, at any time held by it, and any sale may be made by private contract or by public auction, and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;

(b) To retain, manage, operate, repair and improve and to mortgage or lease for any period and on such terms as the trustee shall deem proper any real estate or personal property held by the Trustee, including power to demolish any buildings or other improvements in whole or in part and to erect buildings or other improvements and to make leases that may extend beyond the term of the trust; and to foreclose, extend, renew, assign, release or partially release and discharge mortgages or other liens;

(c) To compromise, compound and settle any debt or obligation due from third persons to it or to third persons from it as Trustee hereunder, and to reduce the rate of interest on, to extend or otherwise to modify, or to foreclose upon default or otherwise to enforce such obligation;

(d) To vote in person or by proxy, with or without power of substitution, on any stocks, bonds, or other securities held by it; to exercise any options appurtenant to any stocks, bonds or other securities for the conversion thereof into other stocks, bonds or securities, or to exercise any rights to subscribe for additional stocks, bonds or other securities and to make any and all necessary payments therefor; to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties in which it may deem wise and to accept any securities which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger and thereafter to hold the same;

(e) To make, execute, acknowledge and deliver any and all deeds, leases, assignments, documents of transfer and conveyance, documents of release and satisfaction and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(f) To enforce any rights, obligation or claim in its discretion and in general to protect in any way the interests of the Trust Fund, either before or after default, and in case it shall consider such action for the best interests of the Trust Fund in its discretion to abstain from the enforcement of any right, obligation or claim, to abandon any property, whether real or personal, which at any time may be held by it;

(g) With the approval of the Retirement Committee, to borrow from anyone, including the Trustee, such sum or sums, from time to time, as the Trustee considers necessary or desirable and for the best interests of the Trust Fund and for that purpose to mortgage or pledge all or any part of the Trust Fund;

(h) To cause any investment in the Trust Fund to be registered in, or transferred into, its name as Trustee, or the names of its nominee or nominees, or to retain them unregistered or in form permitting transferability by delivery, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;

(i) To retain in cash or other property unproductive of income such portion of the Trust Fund as deemed advisable, without liability therefor;

(j) If a bank, to deposit in its commercial banking department that portion of the Trust Fund retained in cash, without liability for the payment of any interest thereon;

(k) To acquire property returning no income or slight income, or to retain any such property so long as the Trustee shall deem advisable;

(l) To purchase, convey, lease and otherwise deal with any oil, gas and other minerals, mineral rights and royalties; to operate and develop oil, gas and other mineral properties and interests, including, but not limited to, the power to make and release oil, gas, and mineral leases and subleases; to make mineral deeds and royalty transfers; to create, reserve, and dispose of overriding royalties, oil payments, gas payments, and any other interests; to execute division orders and transfer orders; to enter into development and drilling contracts, operating agreements and unitization agreements; and to make agreements for present or future pooling of any and all interests in oil, gas and other minerals;

(m) To consult with counsel, who may be counsel to the Company, and in so doing shall be fully protected in acting upon the advice of such counsel;

(n) To continue to exercise any powers and discretion herein granted for a reasonable time after the termination of the trust;

(o) To perform all acts which it may deem necessary or proper, and to exercise any and all powers of the Trustee under this agreement upon such terms and conditions as it may deem for the best interests of the Trust Fund.

In addition to the powers and authorities herein elsewhere granted, except as herein expressly provided otherwise, the Trustee shall have the powers, authorities and discretions set forth in the laws of the State of Texas insofar as applicable hereto. The powers and authorities herein granted to the Trustee shall not be limited by the fact that such Trustee may be a bank or other financial institution, and no Trustee duly appointed, qualified and acting hereunder shall be subject to limitations or restrictions imposed upon a bank or other financial institution or upon fiduciaries generally with respect to the type of investment any such institution or Trustee may make of its own funds or the funds of others. Specifically, such Trustee may retain, acquire, or otherwise deal in any of its own capital stock if it is so expressly directed by the Retirement Committee, may retain, acquire or otherwise deal in stock for which it is registrar or transfer agent, may contract or otherwise enter into transactions between itself as Trustee and as a bank or between itself as Trustee and any other institution for which it then, theretofore or thereafter may be acting as trustee, subject to the laws of the State of Texas.

ARTICLE VI

ADMINISTRATIVE PROVISIONS

1. The Trustee shall maintain true and accurate records and accounts reflecting all receipts and disbursements made by it pursuant to this agreement and containing a descrip-

tion of all assets from time to time held by it hereunder. Such records and accounts shall be open to the inspection of the Retirement Committee, the Company and the Union at all reasonable times and may be audited from time to time by such person or persons as the Retirement Committee may designate; provided that there shall be an annual audit of the trust fund, and a copy of the result must be made available by the Retirement Committee for the inspection by any Participant in the Plan. Within sixty (60) days after the end of each calendar year (or after the end of such other annual period as may be agreed upon by the Trustee and the Retirement Committee), within thirty (30) days after its removal or resignation pursuant to Article VII hereof, and at such other times as the Company and the Union may request in writing filed with the Trustee, the Trustee shall deliver to the Retirement Committee a report and account in writing, a copy of which shall also be delivered to the Company and the Union, covering the period from the last previous report and account, in such form and detail as the Retirement Committee may request. The approval of any such report and account by the Retirement Committee shall be a full acquittance and discharge of the Trustee with respect to the matters therein if said report be correct. Upon the expiration of ninety (90) days from the date of filing such annual or other report and account, or upon the earlier specific approval thereof as provided above, the Trustee shall be forever released and discharged from all liability and accountability, except for actual fraud, to anyone with respect to the propriety of its acts and transactions shown in such report and account except with respect to any such acts or transactions as to which the Retirement Committee shall within ninety (90) days period file written objection with the Trustee. Nothing herein contained, however, shall be deemed to preclude the Trustee from its right to have its accounts judicially settled by a court of competent jurisdiction, in which event only the Trustee and the Company shall be necessary parties.

2. The Trustee may employ such agents, attorneys (who may be counsel for the Company), auditors, clerical and

other assistants as, in its judgment, may be necessary or desirable for the proper administration of the Trust Fund and to advise the Trustee hereunder, and pay them a reasonable compensation from the Trust Fund; and may delegate to any person so employed any ministerial power or duty of the Trustee.

3. The Trustee may institute, maintain or defend any litigation necessary in connection with the administration of the Trust Fund, provided the Trustee shall be under no duty or obligation to do so unless it shall have been indemnified to its satisfaction against all expenses and liabilities which it may sustain or reasonably anticipate by reason thereof, and unless the Trustee shall be paid a reasonable compensation for its own extraordinary services in connection therewith.

4. The Trustee shall be reimbursed for all of its expenses, and shall be paid such reasonable compensation as may be agreed upon from time to time by the Retirement Committee and the Trustee. Such expenses and compensation shall be paid from the Trust Fund.

5. No person shall be obliged to see to the application of any money or property delivered to the Trustee, nor shall any such person be required to take cognizance of the provisions of this agreement. The certificate of the Trustee, under its corporate seal, signed by a duly authorized officer, may be received by any person dealing with the Trustee as conclusive evidence of any matter relating to this agreement or the administration thereof. In general, each person dealing with the Trustee may act upon any advice, request or representation in writing by the Trustee, or the Trustee's duly authorized agent, and shall not be liable to any person in so doing. In case of doubt as to whether the Trustee has or has not been granted a specific power not enumerated hereunder, the certificate of the Trustee that the exercise of such power is necessary or desirable for the proper administration or distribution of the Trust Fund shall be conclusive upon all persons dealing with the Trustee to the

same extent as if such power had been specifically granted to the Trustee.

6. If the assets held by the Trustee hereunder, or any benefits payable by the Trustee hereunder, shall become liable for the payment of any estate, inheritance, income or other tax, charge or assessment which, in the Trustee's opinion, it shall be or may be required to pay, the Trustee shall have full power and authority to pay such tax, charge or assessment out of any moneys or other property in its hands for the account of the person whose interests hereunder are liable for such tax, but at least ten (10) days prior to making any such payment the Trustee shall mail a notice to the Retirement Committee of its intention to make such payment. The Trustee, also, prior to making any payment to a beneficiary under the Plan and this agreement, may require such releases or other documents from any lawful taxing authority and may require such indemnity from such beneficiary as it shall deem necessary for its protection.

7. The Trustee may require any certificate, notice or other instrument or information believed by it to be necessary to perform its duties hereunder, and may rely and act upon the basis of any such certificate, notice, instrument or other information furnished to the Trustee which it believes to be reliable and to have been signed, made or presented by the proper party or parties, except that any action herein permitted or required to be taken by the Company shall be by resolution of its board of directors or by a person authorized by resolution of its board of directors to take such action.

8. The Trustee shall not be liable for its action in making payment or delivery of any cash or other property to any person or corporation at the direction of the Retirement Committee, and, in the event of litigation, the Trustee shall not be liable for declining to make delivery thereof until final adjudication shall be made in a court of competent jurisdiction.

9. The Trustee shall not be responsible for any acts or omissions of the Retirement Committee. The Trustee shall be under no duty to inquire into any rule, regulation, instruction, direction or order purporting to have been issued by the Retirement Committee and to be duly signed by a majority of the Retirement Committee; and any certificate or other written instrument duly signed by the chairman or secretary of the Retirement Committee purporting to evidence any such instruction, direction or order, shall be accepted by the Trustee as conclusive proof thereof. The Trustee shall also be fully protected in acting in good faith upon any notice, resolution, instruction, direction, order, certificate, opinion, letter, telegram or other document believed by the Trustee to be genuine and to be the act of the Retirement Committee.

10. The Company and the Union intend that the trust herein established for the purpose of implementing the Plan shall qualify under Sections 401 and 501 of the Internal Revenue Code of 1954, as amended; and until advised to the contrary in writing, the Trustee may assume that the trust is so qualified and is entitled to the exemption from taxes provided for in said sections. In the event the Trustee at any time bona fide believes such exemption to be uncertain the Trustee may, but shall not be required to, take such steps and withhold such payments as it deems necessary to protect itself.

11. No bond shall ever be required of the Trustee or any successor Trustee duly appointed and acting hereunder.

12. The Company and the Union shall have authority to enforce this agreement on behalf of any and all persons having or claiming any interest in the Trust Fund or under this agreement. In any action or proceeding affecting the Trust Fund or any property constituting part or all thereof or the administration thereof or for instructions to the Trustee, the Company, the Union and the Trustee shall be the only necessary parties, and no employees or former employees of the Company or their beneficiaries or any

other person having or claiming to have an interest in the Trust Fund or under the Plan shall be entitled to any notice or process and any judgment that may be entered in such action or proceeding shall be binding and conclusive on all persons having or claiming to have any interest in the Trust Fund or under the Plan. The Company, the Union or the Trustee, however, may include any such person or persons as a party to any action or proceedings it may institute as it may consider necessary or desirable.

ARTICLE VII

SUBSTITUTION OF TRUSTEE

1. The Trustee may resign at any time upon giving thirty (30) days' prior written notice to the Retirement Committee, or with the consent of the Retirement Committee the Trustee may resign with less than thirty (30) days' prior notice.

2. The Retirement Committee may remove the Trustee at any time by giving at least (30) days' prior written notice to such Trustee.

3. Upon such removal or resignation of the Trustee, the Company and the Union shall within sixty (60) days appoint and designate a successor Trustee conforming to the standards set forth in the Plan, which shall qualify as such by delivering a written acceptance of the trust to the Company, the Union and the retiring Trustee.

4. Title to all property and records or true copies of such records necessary to the current operation of the Trust Fund held by the Trustee hereunder shall vest in any successor Trustee acting pursuant to the provisions hereof, without the execution or filing of any further instrument. Any resigning or removed Trustee shall execute all instruments and do all acts necessary to vest such title in any successor trustee of record. Each successor Trustee shall

have, exercise and enjoy all the powers, both discretionary and ministerial, herein conferred upon its predecessor. No successor Trustee shall be obliged to examine the accounts, records and acts of any previous Trustee or Trustees, and each successor Trustee in no way or manner shall be responsible for any action or omission to act on the part of any previous Trustee. Except where the context clearly indicates the contrary, the word "Trustee" as used in this agreement shall include the original and any successor Trustee or Trustees.

5. Any corporation resulting from any merger or consolidation to which the Trustee may be a party or succeeding to the trust business of the Trustee, or to which substantially all the trust assets of the Trustee may be transferred, shall be the successor to the Trustee hereunder without any further act or formality with like effect as if such successor Trustee had originally been named Trustee herein.

ARTICLE VIII

Amendment and Termination

1. This agreement may be amended by the Company and the Union from time to time in any respect whatever by delivery to the Trustee of a copy of the resolution of the board of directors of the Company specifying such amendment, duly certified by an officer of the Company and a resolution from the Executive Committee of the Union duly certified by an officer of the Union; provided, however, that under no condition shall any such amendment or amendments result in or permit the return or repayment to the Company of any property held or acquired by the Trustee hereunder, or the proceeds thereof, or result in or permit the distribution of any such property for purposes other than the exclusive benefit of Participants and their beneficiaries or payment of the administrative expenses of the

Plan, except to the extent provided for by Paragraph 3 of Article IX; and provided, further, that no such amendment or amendments shall substantially increase the duties or responsibilities of the Trustee hereunder without its written consent. Any such amendment or amendments may be made effective retroactively which, in the opinion of the board of directors of the Company and the Executive Committee of the Union, is necessary to be made so effective in order to establish and maintain the qualification of the Plan and the trust hereby created under Sections 401 and 501 of the Internal Revenue Code of 1954.

2. This agreement and trust may be terminated at any time by the Company in accordance with Section 13.02 of the Plan by delivery to the Trustee of a copy, certified by an officer of the Company, of a resolution of the board of directors of the Company specifying such termination and the concurrent termination of the Plan. Unless previously terminated, this agreement and trust shall automatically terminate when no cash or other property remains in the Trust Fund.

3. In the event of termination of the trust, the Trustee shall distribute all cash, securities and other property then constituting the Trust Fund, less any amounts constituting charges against the Trust Fund, in such manner, at such times and to such persons or corporation as may be directed by the Retirement Committee in accordance with the terms of the Plan.

4. Nothing in this agreement and trust shall be construed to prevent the Company from suspending its contributions to the trust for any period whatsoever or permanently, but such a suspension, whether temporary or permanent, shall not of itself terminate the trust.

5. Unless otherwise terminated, this trust shall continue to exist for such period of time as is permitted by the laws of the State of Texas now in force and effect, or by any amendment thereof.

ARTICLE IX

Miscellaneous Provisions

1. The Company and the Union assume no obligation or responsibility for any act or omission of the Trustee hereunder. The Trustee assumes no obligation or responsibility with respect to any action required by this agreement or by the Plan on the part of the Company or the Union or the Retirement Committee. No personal liability whatever shall attach to or be incurred by any stockholder, officer or director, as such, of the Company under or by reason of the terms or conditions contained in or implied from this agreement. The duties, obligations and rights of the Trustee shall be limited to and by the provisions of this agreement notwithstanding any reference herein to the Plan; provided, however, the Company agrees to deliver to the Trustee an executed copy of each amendment to the Plan within thirty (30) days of the date of such amendment duly certified by an officer of the Company, and acknowledged by the Union.

2. No benefits or beneficial interests provided for hereunder or under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, either voluntary or involuntary, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be null and void; neither shall such benefits or beneficial interests be liable for or subject to the debts, contracts, liabilities, engagements or torts of any persons to whom such benefits or funds are payable.

3. The Company and the Union shall not have any beneficial interest in the Trust Fund or any part thereof; and no part of the Trust Fund shall ever revert or be repaid to the Company, either directly or indirectly, except for such part of the Trust Fund, if any, which due to erroneous actuarial computations during the previous life of the trust

remains in the trust after satisfaction of all liabilities to persons entitled to benefits under the Plan.

4. The laws of the State of Texas shall govern, control and determine all questions arising with respect to the Trust Fund and interpretation and validity of the provisions of this agreement. In the event any provision of this agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this agreement, but shall be fully severable and the agreement shall be construed and enforced as if said illegal or invalid provision or provisions had never been inserted herein.

5. Words and phrases are used interchangeably in the Plan and this agreement, and a word, term or phrase defined in either is similarly defined for the purposes of the other. The terms "agreement", "herein", and "hereunder", and similar terms mean this trust agreement including the Plan which is made a part hereof, unless qualified by the context.

6. This agreement shall be binding upon persons who are entitled to any benefits hereunder, their heirs and legal representatives, and upon the Company, the Union, the Trustee, and their respective successors and assigns.

7. This agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument. A copy hereof conformed with the signatures of the parties hereto and certified by the Trustee, or a copy hereof with facsimile signatures of the parties hereto, may be used for any purpose without production of an original counterpart.

IN WITNESS WHEREOF, DALLAS TRANSIT COMPANY, DIVISION 1338 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, and MERCANTILE NATIONAL BANK AT DALLAS have caused these presents to be executed by their duly authorized officers on this the 6th day of April, 1960, effective as of the 1st day of July, 1960.

DALLAS TRANSIT COMPANY

By P. W. TATE
President

DIVISION 1338 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA

By G. W. ADKINS

MERCANTILE NATIONAL BANK AT DALLAS

By B. W. J. KERR, JR.
Vice President and
Trust Officer

ATTEST:

????
Secretary

ATTEST:

E. R. THOMPSON
Secretary

ATTEST:

JOHN C. SANS
Assistant Cashier

APPENDIX D

Excerpts from the Constitution and General Laws of the Amalgamated Transit Union

Certain excerpts from the Constitution and General Laws of the Amalgamated Transit Union of which Appellant is Local Division 1338 were admitted into evidence. (SF 14; Pl. Ex. 14)

"Sec. 2. The following abbreviations, when used in this Constitution and General Laws of the Amalgamated Transit Union, shall have these meanings, viz:

A.T.U. — Amalgamated Transit Union.
I.U. — International Union.
I.P. — International President.
I.S.T. — International Secretary-Treasurer.
G.E.B. — General Executive Board.
L.D. — Local Division.
R.S. — Recording Secretary.
F.S. — Financial Secretary.
L.T. — Local Treasurer.
L.C. — Local Correspondent."

STRIKES AND LOCKOUTS

"Sec. 127. When any difficulty arises between the members of any L.D. of this Union and their employers, regarding wages, hours of labor, or any other question that may result in a strike or lockout, the L.D. shall notify the I.P. who shall determine whether an International officer shall be sent in at that stage to assist the Division. The dispute shall then be taken up by the executive board of the L.D. or by a committee appointed by the L.D. for that purpose, and they shall make a thorough investigation and seek, through conferences with the company, to get the matter satisfactorily adjusted. The committee, after having finished the work of negotiation with the company, shall submit a full report to a meeting of the L.D.

"Sec. 128. If by compliance with Section 127 the committee has been unable to secure a settlement of the matters in dispute satisfactorily to the L.D., and the L.D. believes that the matters in dispute are of such importance that a strike should be ordered, the L.D. shall give timely notice to the I.P. of intention to strike and advise with the I.P. before taking any such vote. Failure to give timely notice to the I.P. shall be a factor to be considered by the G.E.B. in determining whether to grant strike sanction. If, after consultation with the I.P., it is determined that a strike vote shall be taken, the question of a strike shall be submitted to a secret ballot vote of the membership of the L.D. If necessary to reach the membership of the L.D. the ballot shall be taken by referendum, ballots being prepared and so distributed to give every member an opportunity to vote. If two-thirds of the membership voting upon the question decide in favor of suspending work, if an International officer is not present at the time of the taking of the vote, the L.D. shall at once notify the I.P. If an International officer has been assigned to assist the Division, he shall proceed in the same fashion as is hereinafter set forth for governing situations in which no International officer has yet been assigned up to this stage of the matter. The I.P., if no International officer has previously been assigned to the matter, shall, upon receipt of the notice of the results of the strike vote, proceed to the scene of dispute in person or by deputy, and in conjunction with the committee of the L.D., shall make a thorough investigation and attempt to settle the matter in dispute. In case of failure thus to secure a settlement he shall then, in conjunction with the Local committee, prepare propositions of arbitration defining the points in dispute and the basis upon which they shall be arbitrated. If the company refuses to accept arbitration as tendered, the I.P. or his deputy shall then communicate with the membership of the G.E.B. in writing or by telegram and obtain the consent of a majority of the G.E.B. before endorsing the strike.

"Sec. 129. In case the International representative who is handling questions in dispute between a L.D. and the employing company has propositions that he believes should be considered by the membership, he shall acquaint the membership with such propositions either through a circular carefully outlining and explaining the propositions, or through a general meeting of the L.D. After having acquainted the membership with the proposition or propositions, he shall then have a referendum vote of the membership of the L.D. taken upon the same. If the L.D. has by-laws providing for a referendum vote of its membership, he shall follow such provisions. If the L.D. has no by-laws governing such a vote, he shall then make arrangements and have such votes taken in the best and easiest manner possible — either by appointing a special election day and having the membership come to the hall or headquarters of the L.D. and cast their vote, or through a committee who shall take the vote of the members at the different stations or barns. Every member shall be given an opportunity to vote upon said proposition and the majority of the votes cast by the membership of the L.D. shall decide the question.

"Sec. 130. The G.E.B. shall have the power to sustain or refuse to sustain the action of the L.D. the I.P. shall notify the L.D. of the decision without delay.

"Sec. 131. In case the G.E.B. refuses to sustain the L.D. in its application for support, the L.D. can appeal for a vote of all L.D.s in request for support, and it shall be the duty of the I.P. to submit the appeal and facts in the case to a vote of the general membership, which vote shall be returned to the I.P. within thirty (30) days, and if the appeal is sustained the L.D. making the same shall be notified and shall be entitled to all support in accordance with the Constitution."

Grady W. Adkins, President of Amalgamated Transit System, Local 1338, testified that Division 1338 of the Union as presently named is the same organization that was formerly known as Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America. (S.F. 310, L.L. 10, 12)

APPENDIX E

Opinion and Judgment of Court of Civil Appeals for the Fifth Supreme Judicial District of Texas
Delivered May 31, 1968

FROM A DISTRICT COURT
OF DALLAS COUNTY, TEXAS

No. 17,097

Amalgamated Transit Union, Local Division 1338; Henry Pyle, G. W. Bridges, and Charles Work (Individually and as representatives of a class of beneficiaries of a retirement plan); and W. E. Armstrong and H. H. Bennett (Individually and as representatives of a class of beneficiaries of a retirement plan),

Appellants

v.

The Dallas Public Transit Board; The City of Dallas; The Dallas Transit Company; The Mercantile National Bank at Dallas, C. W. Levy and 59 Named Individuals,

Appellees

This is an appeal from a judgment of the district court construing and reforming a pension Plan and Trust agreemen.

FACTS

For a number of years there has existed a system of public mass transportation for the general public of Dallas, contiguous unincorporated areas and adjoining municipalities, same being commonly known as the Dallas Transit System. This transit system was formerly owned and operated by a privately owned company, the Dallas Transit Company (hereinafter referred to as Company). The bus operators and mechanics employed by the Company were represented in collective bargaining by Division 1338, of the Amalgamated Transit Union[1] (hereinafter called Union). On April 6, 1960, following collective bargaining, the Company and the Union, representing certain employees of the Company who were members of the Union, jointly established a pension Plan and Trust agreement providing pension benefits for the Transit System's employees "who were eligible for Union membership and * * * regularly and continuously employed by the Company * * *." The Plan and Trust provided for contributions by both the employer and the employees in specified percentages of income and designated the Mercantile National Bank at Dallas (hereinafter called Trustee Bank) as trustee of the pension funds. Pursuant to the Trust Agreement and the Plan, the principal administrative duties of the Plan, with instructions to the Trustee Bank, are concentrated in the hands of a retirement committee consisting of a chairman and three additional members, two to be designated by the Company and two by the Union.

The Plan provided that all acts, decisions and determinations of the retirement committee shall be made with the consent and approval of the majority of the members thereof and that in the event a majority cannot agree such items in disagreement will be referred to the Plan actuary who is designated an impartial arbiter whose decisions shall be binding on all parties. Another provision of the Plan provides that the Company and the Union shall have the right, by mutual consent, to amend the Plan, such amendment being evidenced by a written instrument executed in the name of the Union and of the Company.

On December 9, 1963, the City Council of the City of Dallas enacted Ordinance No. 10086 which provided that there was thereby created a department of the City of Dallas to be known as the Dallas Public Transit Department, the purpose and function of which was to acquire, maintain and operate a system of public mass transportation for the general public of Dallas, contiguous unincorporated areas and adjoining municipalities. The ordinance, in Section 2 thereof, created the Dallas Public Transit Board (hereinafter called Board) "for the purpose of the control, management, operation and administration of this department * * *." This ordinance was enacted pursuant to the authority of Art. 1118w, Vernon's Ann. Civ. St. of Texas.[2]

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[1] Formerly known as "Division 1338 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America."

On December 23, 1963 the City of Dallas entered into a contract of sale with the Company, by the terms of which the City purchased all of the physical assets comprising the bus and trolley coach transit system in the City and County of Dallas, for the sum of $5,500,000. Section V of the contract provided that the Company would transfer to the City:

> "* * * its rights, if any, as now exist or may hereafter accrue in the properties, physical assets and records belonging to the various retirement systems of the officers and employees so that the same may be administered by purchaser or the trustee, as the case may be, for the benefit of those for whom these retirement systems were established."

Section XIII provided:

> "The purchaser, however, is not assuming or recognizing any union contracts."

Thereafter the City of Dallas assumed the retirement Plan and continued to make payments thereunder but expressly refused to assume any Union contract and the Trustee Bank was advised that the City and representatives of the Board, pursuant to Art. 5154(c),[3] and Section 2(2) of the National Labor Relations Act, as amended by 29 U.S.C.A., Sec. 152(2), would refuse to recognize the Union as representing the employees covered by the Plan; refuse to recognize the Union as having any standing to appoint members of the retirement committee; and refuse to recognize the Union as having any right to take any action with respect to said retirement Plan and Trust.

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[2] Article 1118w, Vernon's Ann. Civ. St. of Texas, Sec. 1, provides:

> "Any city or town, including any Home Rule City operating under Title 28, Revised Civil Statutes of the State of Texas of 1925, as amended (hereinafter referred to as 'city' or 'such city') shall have power to own, hold, purchase, construct, improve, extend and operate street transportation systems for the carrying of passengers for hire within such city, its suburbs and adjacent areas."

Sec. 2. of Art. 1118w, V.A.C.S. expressly authorized cities to issue bonds and notes which could be sold to secure revenues for the acquisition, purchase, construction, improvement or extension of such transportation system. Pursuant to this statute the City enacted Ordinance No. 10134 on January 8, 1964 which authorized the issuance of $5,500,000 of transit system revenue bonds, the same ordinance ratifying and approving the execution of a deed of trust by the Mayor, City Manager and City Secretary securing the payment of the bond by transfer to the First National Bank at Dallas, as Trustee of the transportation system and all property of every kind used or acquired in connection with the system. This ordinance provides that the system shall be operated by the Dallas Public Transit Board, created by the deed of trust. The deed of trust provided that the management and control of the system during such time as the obligations are outstanding and unpaid shall be vested in a Board of Trustees designated "Dallas Public Transit Board." It further provided that the Board of Trustees shall have absolute and complete authority and power with reference to the control, management and operation of the system.

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[3] "Art. 5154c. Public employees, collective bargaining contracts with organizations representing; strikes; loss of civil service and other rights.

Section 1. It is declared to be against the public policy of the State of Texas for any official or group of officials of the State, or of a County, City, Municipality or other political subdivision of the State, to enter into a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees, and any contracts entered into after the effective date of this Act shall be null and void.

Sec. 2. It is declared to be against the public policy of the State of Texas for any such official or group of officials to recognize a labor organization as the bargaining agent for any group of public employees.

Sec. 3. It is declared to be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State of Texas or any political subdivision thereof. Any such employee who participates in such a strike shall forfeit all civil service rights, re-employment rights and any other rights, benefits, or privileges which he enjoys as a result of his employment or prior employment, providing, however, that the right of an individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

Sec. 4. It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or nonmembership in a labor organization.

Sec. 5. The term 'labor organization' means any organization of any kind, or any agency or employee, representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Sec. 6. The provisions of this Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike."

On February 15, 1965, the City of Dallas enacted Ordinance No. 10874 for the avowed purpose of "more clearly defining the powers and duties of the Board and its relation to the City Council of Dallas." This ordinance provided that the Board shall "maintain and operate" the transit system and "shall be vested with the control, management, operation and administration of said system under the terms and conditions provided in this ordinance and by the terms and conditions of the deed of trust as amended by the supplemental deed of trust." This ordinance provides, inter alia, that the Board members would be subject to the provisions of the charter of the City of Dallas and other laws applicable to the members of the City Council; that members of the Board must reside within the city limits of the City of Dallas; that the Board must have the approval of the City Council before making any capital improvements to the system; that the City Council shall have final control of fares, charges and tolls; that the Board must file a monthly financial report for the City Council; that the Board shall keep accounts and records in accordance with the provisions of the charter of the City of Dallas; that all contracts shall be made in the name of the City of Dallas for the benefit of the Dallas Transit System and the contract shall be signed by the City Manager and attested by the City Secretary and countersigned by the City Auditor; that all revenues shall be deposited with the City Treasurer; that the General Manager and officers and employees shall be subject to the provisions of the charter of the City of Dallas concerning a conflict of interests; and that the City Attorney is to represent the system in all legal matters.

The constitution and general laws of the Amalgamated Transit Union outline procedures that are necessary and must be followed by the local division of the Union prior to calling a strike. They provide for the right of the local division to strike when they have any dispute with their employer which cannot be settled and solved.

Inasmuch as the City had taken the position that it could not recognize the Union as representing the employees covered by the Plan, by virtue of Art. 5154(c),[4] and since the City refused to recognize the Union as having any right to appoint members to the retirement committee or to take any action with respect to said Plan and Trust, the Trustee Bank sought advice concerning the further administration of the Plan and Trust. Upon advice of counsel the Trustee Bank on October 31, 1966 filed this suit in the nature of a declaratory judgment action naming as defendants the Company, the Union, the Committee, the Board, and three individuals, as representative members of that class of beneficiaries under the Plan and Trust agreement who are currently participants therein, and three other named individuals, as representative members of that class of beneficiaries under the Plan and Trust agreement who are currently receiving distributions thereunder. The Trustee Bank prayed that the court specifically instruct it with respect to (1) who are the proper parties for the

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[4] Wherever in this opinion Art. 5154(c) is referred to it shall mean Vernon's Revised Annotated Civil Statutes of Texas.

Trustee to deal with and rely upon and specifically, who has the authority to name the committee and how said committee should be constituted as well as who has the authority to administer, amend and terminate the Plan and Trust agreement; and (2) under the existing state of facts, whether the Plan and Trust agreement should be reformed and, if so, how; specifically, how the definition of the eligible group should be stated. Trustee Bank also prayed that it be allowed reasonable compensation from trust fund for the payment of attorney's fees.

The City and Board filed a joint answer, represented by the City Attorney, asserting that the City is the "successor in title" to the Company and "has assumed all the obligations and responsibilities under the employee Trust." They allege that the transit system is now under the control of the Dallas Public Transit Board, created pursuant to Ordinance No. 10874 and that the City is the sole owner of the Dallas Transit System. They further say that pursuant to Art. 5154(c), as well as the National Labor Relations Act, the Union no longer can, as a matter of law, represent such employees as beneficiaries under the above Trust, since the collective bargaining agreement between a labor organization and a municipal corporation is specifically prohibited by the statute.

The Union, and individual defendants, filed an answer and cross-action asserting that Art. 5154(c) is not applicable to the Board or to the employees who operate the transit system, praying that the original action be dismissed and that upon the cross-action the court declare the collective bargaining rights of the transit employees.

Trial was to the court, without a jury, and in granting the application for instruction and declaratory and equitable relief sought by Trustee, the court held: (1) that Trustee is instructed to disregard any provisions in the Plan and Trust requiring recognition of the Union and to deal only with the City or through its duly authorized agencies (currently the Dallas Public Transit Board), and said City is entitled to exercise unilaterally all powers formerly exercised by the Transit Company and/or Union, and said Union being thereby removed as a party to said Plan and Trust; (2) that with respect to the Plan the City acting directly or through its duly authorized agencies (currently the Dallas Public Transit Board) is entitled to exercise all powers formerly exercised by the Transit Company. The court further decreed that the Trustee pay from Trust funds to its attorneys the sum of $13,500. The Union was denied all relief sought by its cross-action. This appeal follows.

OPINION

In their first five points of error, briefed together, appellants earnestly contend that since the Dallas Public Transit Board is not a "political subdivision" of the State of Texas, and the members of the Board are not "officials of the State, or of any County, City, Municipality or other political subdivision of the State," nor are the employees of the transit system "public employees" within the meaning of Art. 5154(c), the trial court erred in holding that such statute was applicable to the Board and employees of the transit system so that it would be illegal for the Board to recognize the Union as requested. The principal basis of appellants' contention that Art. 5154(c) is not applicable to the factual situation here presented is that the City, through the medium of a series of ordinances, has specifically placed the control, management, operation and administration of the system in the Board, which is a completely autonomous entity and has thereby divested itself of the management and control of the system and its operations. Appellants concede that had the City exercised its rights pursuant to Art. 1118w, V.A.C.S. to itself operate the system, then Art. 5154(c) would have applied, forbidding Union recognition and collective bargaining since those in charge of the system would have been "officials of a city, municipality or other political subdivision of the State," within the meaning of the statute.

The City and the Board counter these contentions by pointing to the record that demonstrates without dispute that the transit system was purchased by the City of Dallas; that it is owned by the City of Dallas, and that the City has created an agency in the form of the Board to carry out the actual operation of the system but that such Board is subject to the final control of the governing body of the City of Dallas. They contend that since the Board, though clothed with broad administrative powers, is but an arm, an agency of the City and therefore a "political subdivision" within the meaning of the statute. Such being true, they assert that the court was correct in holding that the members of the Board are "officials" and that the employees are "public employees" within the meaning of the statute.

We agree with appellees' position. Unlike the Board of Trustees created by express act of the Legislature in Bolen v. Board of Firemen, Policemen and Fire Alarm Operators' Trustees of San Antonio, Texas, 308 S.W. 2d 904 (Tex. Civ. App., San Antonio 1958, writ ref'd), relied upon by appellants, the Board in this case was created by municipal ordinance passed by the City Council of the City of Dallas as an administrative agency of the City and the people of Dallas. While it is true that it is granted broad powers in many respects, such being expressly designed to remove the administration of the Board from the field of politics, yet in the final analysis the City of Dallas is the ultimate authority in the ownership, control and operation of the system. This fact was recognized by us in the very recent decision of Smith v. City of Dallas, 425 S.W. 2d 467 (Tex. Civ. App., Dallas 1968), which involved a suit for personal injuries sustained by a passenger on one of the buses operated by the system and wherein we held that the Board, and its insurance representative, could not waive legal rights of the City, and that the Board was, in effect, the operative agency of the City.

Since it is evident to us that since the City Council of the City of Dallas appoints the members of the Board and supervises their administrative actions, it is inescapable that such Board members fall within the category of "public officials" as designated by the statute in question. Our

Supreme Court in the early case of Kimbrough v. Barnett, 93 Tex. 301, 55 S.W. 120 (1900), defined a public officer or a public official in the State of Texas as follows:

> "'Public office is the right, authority, and duty created and conferred by law, which, for a given period, either fixed by law, or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.'"

To the same effect see Northwestern Nat. Life Ins. Co. v. Black, 383 S.W. 2d 806 (Tex. Civ. App., Texarkana 1964, writ ref'd n.r.e.); Knox et al. v. Johnson, 141 S.W. 2d 698 (Tex. Civ. App., Austin 1940, writ ref'd); and 53 A.L.R. 595. By the same token, the employees of the system are unquestionably "public employees" within the meaning of the statute.

The contention of appellees is supported most strongly by the court in San Antonio Ind. School District v. Water Works Board of Trustees, 120 S.W. 2d 861 (Tex. Civ. App., Beaumont 1938, writ ref'd n.r.e.), in which case an effort was made by the School District to tax property of the Water Works Board on the theory that since the City Council of San Antonio had appointed the Board of Trustees such Board was not a part of the city and therefore the property was not exempt from taxation. It was contended, as is contended here by appellants, that the Water Works Board had been set apart as a separate and distinct entity from the City of San Antonio. The court denied the contention, holding that the Board was an agency of the city and that the municipality had not divested itself of ultimate authority.

We conclude, therefore, that the trial court was correct in holding that Art. 5154(c) is applicable and that since the Board is a "political subdivision" and its officers are "officials" and its employees are "public employees," it would be illegal for the Board to recognize the Union which reserved the right to strike. Appellants' points 1 through 5, inclusive, are overruled.

By their sixth point appellants contend that, assuming the applicability of Art. 5154(c) to the Board, such does not forbid Union participation (a) in the administration of the pension Plan; (b) in the designation of members of the retirement committee; and (c) in joint action with employer amending the Plan. The essence of appellants' argument under this point is that assuming, *arguendo*, that Art. 5154(c) is applicable to the Board, and to the employees of the transit system, still such statute does not prohibit the Union participation in the retirement Trust and Plan because such statute is directed against collective bargaining negotiations respecting the wages, hours, or conditions of employment of public employees. Appellants say that the trial court equated (1) collective bargaining respecting the wages, hours and conditions of employment with (2) the designation of members of a "retirement committee". They point to the difference between the two in that the first involves a concerted employee activity to pressure employer to grant substantive concessions agreeable to a group of employees, which is banned by public policy, whereas the second only involves the designations of certain individuals to administer fiduciary duties in interpreting and applying a pension Trust and Plan, which, they contend, is not banned by the statute. In other words, they contend that the mere designation of a trustee is wholly dissimilar from engaging in collective bargaining and therefore the trial court was without power to perform the major operation upon the Plan and Trust by eliminating the Union participation in the administration of such Plan and Trust and conferring same unilaterally to the City or Board.

We cannot agree with appellants' basic premise that the statute is inapplicable because such premise is predicated upon a too limited view and construction of the Plan and Trust agreement, and also the court's judgment rendered herein, than is actually presented by the record. The Plan and Trust both encompass many provisions relating to not only the basic features thereof but to the administration of the same other than the mere provision for appointment of members of the retirement committee. The trial court's judgment proceeds much further than the mere prohibition of the Union to appoint two members of the retirement committee.

The retirement Plan, entered into in April 1960 between the Company and the Union, is a comprehensive document containing many and detailed provisions concerning the rights and duties of the parties. Following definitions, it defines the employees eligible for retirement benefits and sets forth formulas for computing the benefits and various optional methods of settlement; provides for termination of employment and withdrawal; provides certain vested rights of participants following a definite period of service; commits the Company and Union to enter into a Trust agreement to effectuate the objects of the Plan; provides for a retirement committee to administer the Plan, two members to be designated by Company and two members by the Union; sets forth the powers of the retirement committee; and gives to the retirement committee, in addition to express powers, broad powers as it may reasonably determine from time to time are necessary or appropriate in the full performance of its duties under the Plan and Trust agreement. It further provides that "the Company and the Union shall have the right by mutual consent * * * to amend the Plan * * *." "Any amendment * * * shall be evidenced by a written instrument executed in the name of the Union and of the Company * * *." It provides that the Company may terminate the Plan and for distribution of the Trust fund on termination thereof.

The Trust agreement, dated July 1, 1960 and signed by the Union and Company, is also a comprehensive document which establishes the Trust and designates the Mercantile National Bank as Trustee; provides for payment from the Trust fund upon authorization of the retirement committee; provides for the investment of the Trust funds and granting the retirement committee the right to direct, such investments; provides for the Trust to be qualified under the Internal Revenue Code for Tax Exemption and granting specific authority to the *Union* and the *Company* "to enforce this agreement on behalf of any and all persons having or claiming any interest in the trust fund or under this agreement." It further provides that amendment of the Trust agreement may be had "by the Company and the Union from time to time in any respect whatsoever * * *."

It is apparent from a reading of the Plan and Trust, and a careful analysis of the various provisions contained therein, that the joint appointment by the Union and Company of a retirement committee is but one of the numerous functions to be jointly performed by the settlors of the Trust. For example, one of the most sensitive and valuable rights provided for is the granting to the Union and the Company to amend the Plan from time to time by mutual consent and agreement. It is quite conceivable that such potential amendment or amendments might change the basic characteristics of the Plan and Trust. Again, the right is granted to the Company and Union to enforce the terms of the Plan and Trust on behalf of the parties to be benefited thereby. In each of these areas there is to be considered a possibility of disagreement between the Union and the Company (now the City) in which event collective bargaining would be inevitable.

Art. 5154 (c) specifically declares it to be against the public policy of the State of Texas for the City to enter into a collective bargaining contract with a labor organization, respective the wages, hours or conditions of employment of public employees, nor may a labor organization be recognized as a bargaining agent for any group of public employees. However, the law, in Section 6 thereof, plainly provides that the "provisions of the Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a *representative that does not claim the right to* *strike.*" (Emphasis added.) See Beverly v. City of Dallas, 292 S.W. 2d 172 (Tex. Civ. App., El Paso 1956, writ ref'd n.r.e.). In a collective bargaining agreement dated October 1, 1963, entered into between the Union and the Company after the Trust and Plan had been established, but prior to the time the City purchased the system, it was therein agreed and understood that the Company recognized the Union as the exclusive collective bargaining agency for the Union employees of the Company in regard to matters covering hours of labor, rates of wages, working conditions, and establishing the means of settling grievances, disputes and controversies arising between the parties. It is conceded that the Plan and Trust were both entered into between the Union and the Company as a result of collective bargaining.

We are convinced that the instruments with which we are now dealing, the Plan and the Trust, while not collective bargaining agreements, as such, do result from collective bargaining agreements and necessarily provide, by their very terms, the continuation of collective bargaining agreements between the Union and the Company. We think it quite obvious that it would have been illegal for the City of Dallas to have entered into the Plan and Trust agreement in their inception. Being illegal as against the public policy to enter into a collective bargaining agreement with the Union, a fortiori, it is against the public policy of Texas for the City to administer the collective bargaining contract once it has been entered into.

We are also convinced that the pension Plan and Trust fall clearly within the "wages, hours or conditions of employment of public employees" provision of the statute in question. Probably the leading case on the question of whether a retirement or pension plan is a mandatory subject of collective bargaining is Inland Steel Co. v. National Labor Relations Board, 170 F. 2d 247 (7th Cir. 1948, cert. denied 336 U.S. 960). In that case employer argued that its pension plan was outside the scope of collective bargaining while the Union and the National Labor Relations Board argued to the contrary. The court, in a well-reasoned and extensive opinion, held that the pension plan is one of the "conditions of employment" and therefore an extension of the collective bargaining agreement.[5]

Accordingly, it is our opinion and we hold that it is illegal for the City of Dallas to be a party to the Plan and Trust with the other party thereto being the Union which claims to be the collective bargaining representative of the Union employees. Appellants' sixth point is overruled.

By their seventh point appellants contend that the trial court had no power to so reform the Plan and Trust so as to remove the Union as a party therefrom. In this regard they contend that if it be held that bilateral exercise of powers of administration or amendment of the Trust is illegal, then the Trust should terminate and the monies be distributed to the employees. We do not agree with appellants that the court did not possess the legal authority to reform the agreement of the parties so as to remove the Union thereform, but we do think that the court was in error in so reforming the agreement as to change the bilateral control and administration into a unilateral control vesting solely in the City the right to control and administer the agreements thereby depriving the employees and beneficiaries of the Plan and Trust from any representation whatsoever.

A court of equity is possessed of authority to apply the rule or doctrine of deviation implicit in the law of trusts. Thus a court of equity will order a deviation from the terms of the trust if it appears to the court that compliance with the terms of the trust is impossible, illegal, impractical or inexpedient, or that owing to circumstances not known to the settlor and not anticipated by him, compliance would defeat or substantially impair the accomplishment of the purpose of the trust. Craft v. Shroyer, 74 N.E. 2d 589 (Ohio 1947). In ordering a deviation a court of equity is merely exercising its general power over the administration of trust; it is an essential element of equity jurisdiction. Restatement of Law of Trusts, 2d Edition, Sec. 167, p. 351.

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[5] See also Richfield Oil Corp. v. National Labor Relations Board, 231 F. 2d 717; National Labor Relations Board v. J. H. Allison & Co., 165 F. 2d 766 (6th Cir. 1948), 3 A.L.R. 2d 990, cert. denied 1948, 335 U.S. 814, 69 S. Ct. 31, 93 L. Ed. 369; and National Labor Relations Board v. Black-Clawson Co., 210 F. 2d 523 (6th Cir. 1954).

Bogert, in his Treatise on Trusts and Trustees, 2d Edition, Sec. 561, explains the doctrine of deviation as follows:

> "* * * where there is a conflict between a dispositive provision and administrative direction the latter should give way. The primary and fundamental objects of the trustor are to make certain property transfers to the cestuis and thus secure for them certain advantages * * *. The terms of the trust having to do with the manner in which the trustee should act in order to obtain the primary objectives are not on the same level of importance but are rather minor and auxiliary. The jurisdiction of equity to enforce trusts should and does include power to vary the details of administration which the settlor has prescribed in order to secure the more important result, namely, obtaining for the beneficiaries the advantage which the settlor stated he wished them to have."

While the element of impossibility is not relevant here, we are concerned with illegality and impracticality due to a change of circumstances which were not foreseen by the original settlors of the Trust and Plan. "A term of the trust may be illegal although it does not involve the doing of acts which are criminal or which constitute a tort to third person. It may be illegal because it is against public policy to compel the trustee to do acts which, however, might be done without liability by one who owned the property free of trust." Scott on Trusts, 3rd Edition, 1967, Sec. 166; and Restatement of Law of Trusts, 2d Edition, Sec. 166.

Many cases support the application of the doctrine of deviation,[6] both in Texas and other jurisdictions. Colonial

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[6] This is not to be confused with the doctrine of cy pres which is limited to charitable trusts; Scott on Trusts, 3rd Edition, Sec. 399; Restatement of Law of Trusts, 2d Edition, Sec. 399; Craft v. Shroyer, 74 N.E. 2d 589 (1947).

Trust Co. v. Brown, 105 Conn. 261, 135 A. 555 (1926); Fenn College v. Nance, 210 N.E. 2d 418 (1965); Commonwealth of Pennsylvania v. Board of Directors of City Trusts of City of Philadelphia, 353 U.S. 230, 77 S. Ct. 806, 1 L. Ed. 2d 792 (1957); San Antonio Ind. School District v. Division of World Missions, 161 Tex. 471, 341 S.W. 2d 896 (1960); and Coffee v. Rice University, 408 S.W. 2d 269 (Tex. Civ. App., Houston 1966, writ ref'd n.r.e).

While we are convinced that the court possessed the power to reform the Plan and Trust agreement we are also persuaded that the action of the court in changing the bilateral administration of the Plan into a unilateral administration by the City is not for the best interest of the employees who are the sole beneficiaries of the Plan and Trust.[7] We cannot agree with appellees' statement that the employees are not deprived of a right by the restructuring of the plan. The carefully drawn Trust and Plan assured the employee-beneficiaries that they would have a voice in the administration of the Plan but the court's action has in effect taken from them any voice or representation in the day to day administration of the Plan.

It is no answer to say that the employees possess the right to demand that the Plan and Trust be administered in accordance with the law. It is manifestly clear from the instruments in question that the original settlors intended the administration of the Plan, and even the very life of the Plan itself, be partially vested in the employee-beneficiaries. Of course, as we have pointed out, due to change in circumstances unforeseen by the original settlors a portion of the original Plan and Trust has become illegal since the employees may not be represented by a labor organization which reserves the right to strike. But this is not to say that a reformation within the law is not entirely possible which will avoid the consequences of illegality by permitting the employees to have representation in the administration of the Plan and Trust, provided however, that such representation not be by an organization or group possessing the right to strike.

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[7] While not applicable here, it is important to note the mandatory provision of the National Labor Relations Act, 29 U.S.C.A. 186 (1965) which demands that the employers and employees be equally represented in the administration of pension funds. This clearly demonstrates the spirit and intent of the law not to deprive employees of their right to participate in the administration of pension plans.

Accordingly, it is our judgment that the trial court's decree should be reformed by providing that the Plan and Trust should be modified so as to provide for bilateral authority between the City of Dallas and the employees who are beneficiaries under such Plan and Trust, acting by and through their duly authorized representative or representatives, provided however, that such representative or representatives do not claim the right to strike.

Specifically, the judgment of the trial court is modified, as to Paragraph 1, as follows:

> 1. "That the application for instruction and Declaratory and Equitable Relief by Trustee be granted. The said Trustee is hereby instructed to disregard any provisions in the Plan and Trust designated 'Trusteed Retirement Plan for Union Employees of Dallas Transit Company' requiring recognition of Defendant Transit Union and said Transit Union is thus being removed as a party to said Plan and Trust. In the administration of the plan and Trust the employees who are beneficiaries under such Plan and Trust are granted the right and privilege of selecting or electing their own representative or representatives, provided such representative or representatives do not reserve the right to strike, to be substituted for and in lieu of the Union in the administration and other provisions of the Plan and Trust."

In Point 8 appellants assert that the action of the court in changing the pension Trust to grant unrestricted unilateral control of the Trust fund constitutes unjust enrichment of the employer and is therefore inequitable. Our action in reforming the court's judgment and eliminating the unilateral control by the City and restoring bilateral control to the City and the employees will have the effect of completely eliminating this contention. However, there is no evidence in this record that the City of Dallas or the Board would benefit monetarily by the court's judgment. The judgment was careful to preserve the Trust fund intact for the benefit of the beneficiaries. The point is therefore overruled.

By their Point 9 appellants contend that Art. 5154(c) is unconstitutional as being violative of the Fourteenth Amendment as well as Art. 1, Section 16 of the Constitution prohibiting impairment of contract. They also assert that the application of this article constitutes unconstitutional state regulation of matters within the sphere of federal control. Again, our action in restoring the bilateral administration of the pension fund should have the effect of eliminating any question concerning right of contract. Moreover, the statute in question was not enacted after, but before, the execution of the contracts in question. The Plan and Trust were signed by the parties at a time when the statute involved was in full force and effect. Therefore there was no impairment of contract as contended by appellants. Farmers' Life Ins. Co. v. Wolters, 10 S.W. 2d 698 (Tex. Comm'n App. 1928). Appellants' contention that the obligation of contract is impaired by the judgment of the court, and therefore unconstitutional, is not valid. Our Supreme Court, in Storrie v. Cortez, 90 Tex. 283, 38 S.W. 154, 35 L.R.A. 666 (1896), pointed out that a decision of a court is not a law, within the provisions of the Constitution relating to impairment of contracts. The court pointed out that to fall within the constitutional prohibition the impairment must be some act of the legislative branch of the state and not by a decision of its judicial department only. Finally, the City of Dallas is not subject to the National Labor Relations Act or the federal legislation concerning the same so that the doctrine of pre-emption has never been applied in a case where the dispute or the agreement involves the employer and employee relations of a municipal corporation and municipal employees. South Atlantic & Gulf Coast District of International Longshoremen's

Ass'n, Ind. et al. v. Harris County-Houston Ship Channel Navigation District 358 S.W. 2d 658 (Tex. Civ. App., Houston 1962). Appellants' Points 9 and 9A are overruled.

Neither do we find any merit in appellants' Point 10 wherein they contend that the trial court's application of Art. 5154(c) to employees of the Dallas Transit System denies employees' rights of association specifically protected by the First Amendment to the Constitution of the United States, and contrary to the due process protections of the Fourteenth Amendment to the Constitution of the United States. The complete answer to this contention lies in the fact that the employees of the City of Dallas have a right to associate together as a union. This right is not denied. The thing that is denied is that, if they do so associate, they do not have the right to collectively bargain with the City, provided that the Union reserves the right to strike. We think the question of rights herein involved was completely settled by the decision of this court in Dallas Ind. School District v. American Federation of State, County and Municipal Employees, Local Union No. 1442, 330 S.W. 2d 702 (Tex. Civ. App., Dallas 1959, writ ref'd n.r.e.). Also, our Supreme Court in Lunsford v. City of Bryan, 156 Tex. 520, 297 S.W. 2d 115 (1957), pointed out that the "right to work" statutes involve the legislative intent to protect employees in the exercise of the right of free choice of joining or not joining a union. The purpose of the statute is to afford equal opportunity to work to both classes of employees. Point 10 is overruled.

In their Points 11 and 12 appellants argue that the trial court erred in granting attorneys' fees to be paid from the Trust fund and, alternatively, that such fees so taxed against the Trust fund are excessive. These points are without merit and are overruled. The Trust agreement specifically provides that the Trustee is authorized to employ counsel and to pay them reasonable compensation from the Trust fund. The Plan itself provides that all costs, expenses and fees shall be payable solely out of the Trust fund.

There is ample evidence in this case to support the contention of appellee Bank that there was a need to employ attorneys to advise them concerning the legal matters presented. Moreover, there is ample evidence to support the award of attorneys' fees.

By Point 13 appellants contend that the court erred in failing to hold that each of the persons actually receiving distributions from the Trust estate at the time the action was filed is a necessary party to the Bank's action, and in rendering judgment reforming the Trust in the absence of these necessary parties. There is no merit to this point. The Trust instrument itself provides that in any action or proceeding affecting the Trust fund or the administration thereof, or for instructions to the Trustee, the Company, the Union and the Trustee shall be the only necessary parties, and no employee or former employee of the Company or the beneficiaries or any other person having or claiming to have an interest in the Trust fund shall be entitled to any notice of process in such action. Even so, the Trustee Bank included in its suit not only the parties named in the Trust instrument but also representatives of *both classes of beneficiaries*, namely, the current participants as well as those receiving distribution of benefits. There is no conflict of interest between the beneficiaries. This is not a suit to vary the substantive rights of any beneficiary or to determine the disposition of the Trust fund, but rather is one to determine whether or not the Union should participate with the City in the control of the Plan and Trust. Slay v. Burnett Trust, 143 Tex. 621, 187 S.W. 2d 377 (1945); McDonald v. Alvis, 154 Tex. 570, 281 S.W. 2d 330 (1955).

In their final Point No. 14, appellants complain that the court erred in denying a supersedeas. Following entry of judgment appellants, by formal motion, requested the trial court to fix the amount of supersedeas bond. The court refused to fix the amount of supersedeas bond. Rule 364 (e), T.R.C.P., provides that where the judgment is "for other than money or property or foreclosure" the bond shall be in such amount to be fixed by the court. We think that the court was in error in not fixing supersedeas, as requested by appellants. However, since appellants failed to seek equitable relief from this court through the medium of mandamus, and since the judgment of the trial court is being affirmed, with modifications, we see no reversible error demonstrated. Rule 434, T.R.C.P.

The judgment of the trial court is modified, as above provided, and, as modified, is affirmed.

Claude Williams,
Associate Justice

Delivered:
May 31, 1968.

Friday, May 31, 1968

Opinion of the Court Delivered by Mr. Williams, Associate Justice

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this Court that the judgment of the trial court should be modified as follows:

> 1. "That the application of Instruction and Declaratory and Equitable Relief by Trustee be granted. The said Trustee is hereby instructed to disregard any provisions in the Plan and Trust designated 'Trusteed Retirement Plan for Union Employees of Dallas Transit Company' requiring recognition of Defendant Transit Union and said Transit Union is thus being removed as a party to said Plan and Trust. In the administration of the Plan and Trust the employees who are beneficiaries under such Plan and Trust are granted the right and Privilege of selecting or electing their own representative or representatives, provided such representative or representatives do not reserve the right

> to strike, to be substituted for and in lieu of the Union in the administration and other provisions of the Plan and Trust."

It is therefore considered, adjudged and ordered that the judgment of the court below be in all things modified and affirmed.

It is further ordered and adjudged that the appellees, The Dallas Public Transit Board, The City of Dallas, The Dallas Transit Company, The Mercantile National Bank at Dallas, C. W. Levy and 59 Named Individuals, have and recover of and from the appellants, Amalgamated Transit Union, Local Division 1338, Henry Pyle, G. W. Bridges and Charles Work, Individually and as representative members of that class of beneficiaries currently participants under the Trusteed Retirement Plan for Union Employees of Dallas Transit, and W. E. Armstrong and H. H. Bennett, Individually and as representative members of that class of beneficiaries currently receiving distribution under said Plan, and from Maryland American General Insurance Company, their surety on appeal bond, all costs in this behalf incurred or expended for which execution may issue, and that this decision be certified below for observance.